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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 582.

THE PEOPLE OF PUERTO RICO,
Petitioner,

v.

RUBERT HERMANOS, INC.,
Respondent.

BRIEF FOR RESPONDENT.

HENRI BROWN,
Attorney for Respondent.

GEORGE M. WOLFSON,
Of Counsel.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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(2) That there was litigated in the Supreme Court of Puerto Rico any issue relating to the enforcement of said Act No. 30 or any other local statute, or that the Supreme Court by its decree enforced or purported to enforce any such local statute;

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 582.

THE PEOPLE OF PUERTO RICO,

Petitioner,

v.

RUBERT HERMANOS, INC.,

Respondent.

BRIEF FOR RESPONDENT.

Jurisdiction.

The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by Act of February 13, 1925.

Opinions Below.

The opinion of the Circuit Court of Appeals for the First Circuit is reported in 106 F. (2d) 754. The opinion of the Supreme Court of Puerto Rico is reported in 53 P. R. 779 Spanish Edition. An English translation appears in the Record, pages 285-304.

Statement.

The People of Puerto Rico, here Petitioner, filed an Information (hereinafter sometimes referred to as the complaint, R. 2-5) in the nature of *Quo Warranto* in the Supreme Court of Puerto Rico against Respondent, Rubert Hermanos, Inc., a domestic corporation, in which it prayed that the Court adjudge that the Respondent had forfeited its franchise, order its immediate dissolution, prohibit it to do business in Puerto Rico, and to impose a proper fine with all of the pronouncements which in equity and justice are pertinent in the premises. As ground for forfeiture of respondent's corporate franchise, the petitioner alleged that respondent, notwithstanding the express prohibition contained in its Articles of Incorporation, and further, in open violation of Joint Resolution 23 of the 56th Congress, First Session, approved May 1, 1900 (31 Statutes at Large 716; Title 48, U. S. C. Section 752 as to Sec. 3), owns and controls at the present time, in full ownership, and has owned and controlled several estates in excess of 500 acres, which it devoted to the planting, cultivation and harvesting of sugar cane, and that the holding and control by the respondent of land forming large estates is contrary to the public policy long established and frequently declared by the People of Puerto Rico and is clearly in conflict with the economic well-being of the People of Puerto Rico.

After motion to strike certain parts of the Information had been granted in part and denied in part (R. 43-44) and an amended Information leaving unchanged the ground or grounds above specified filed, Respondent demurred to the amended Information, *setting up as grounds of the demurrer the invalidity of the statutes purporting to confer jurisdiction upon the Supreme Court* and among other grounds that the amended Information is ambiguous,

unintelligible and uncertain in that it set out several causes of action, and that such causes of action are not separately stated (R. 51-58). The demurrer was overruled (R. 81-82) on the authority of an opinion and order overruling what the Court stated to be identical demurrers filed by respondents in *People of Puerto Rico* v. *Fajardo Sugar Company of Porto Rico, et al.* (R. 68-81).

Immediately upon the filing of the Information in the Supreme Court of Puerto Rico, Petitioner filed notices of *lis pendens* in the Registry of Property in which the real properties of Respondent corporation were inscribed. Respondent filed a motion for an order cancelling such notices of *lis pendens* (R. 59-65). Petitioner filed an answer opposing this motion (R. 65-66). The court denied the motion to cancel the *lis pendens* notices (R. 82) on the authority of its opinion in denying what was stated to be an identical motion in *People of Puerto Rico* v. *Fajardo Sugar Co. of Porto Rico, et al.* (R. 83-87). In its demurrer to the amended Information among other grounds of invalidity of jurisdictional statutes specified by Respondent, it was urged that the penalty provisions in Act No. 47 of the Special Session of the Legislature of Puerto Rico of 1935 made the act an *ex post facto* law (R. 87). The same contention was raised in the motion for cancellation of notices of *lis pendens* (R. 64).

The answer to the amended Information was filed by Respondent (R. 89-98). The cause was tried by the court composed of the Chief Justice and Associate Justices of the Supreme Court of Puerto Rico. Respondent presented no evidence, and at the close of the evidence of Petitioner it made a motion in writing to dismiss (R. 121-128), which was overruled by the court (R. 129). A judgment was entered decreeing the forfeiture and cancellation of the charter of Respondent as well as its immediate dissolution

and winding up, including costs and disbursements in the proceeding in the sum of $2,000 attorneys' fees and a fine in the sum of $3,000 (R. 305-306) with an opinion (R. 285-304). The reasons and grounds upon which the judgment was entered, as stated in the judgment in accordance with the opinion, are:

> "It is adjudged and decreed that the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controlling 12,188 acres of land in violation of the provisions of Joint Resolution No. 23 of the Congress of the United States (31 Statutes at Large 716, U. S. C. A., Title 48, sec. 752), of Section 39 of the Organic Law of Puerto Rico and of its own Articles of Incorporation, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres" (R. 305).

It is stated that

> "Mr. Justice Wolff concurred in many parts of the opinion and in the first pronouncement of the judgment. As regards some of the other pronouncements he has some doubts as to the power of the court, which might perhaps be cleared up after a more careful study, and he has also some doubts, even if the court had such power, whether the same should be exercised in the way it has been done, reserving to himself a fuller statement of his views" (R. 305).

Respondent appealed from the judgment to the Circuit Court of Appeals for the First Circuit, stating in its brief that no questions of fact were involved in the appeal, and that the ground upon which the appeal was based was that the Supreme Court of Puerto Rico is without jurisdiction

to entertain the proceeding because the two acts that purport to confer jurisdiction are null and void. Summarily stated, appellant's contention was that Acts 33 of July 22, 1935 and 47 of August 7, 1935, by which jurisdiction of *quo warranto* proceedings founded on violations of Section 752, Title 48, U. S. C., which is the Joint Resolution of Congress of May 1, 1900 carried into the present Organic Act of Puerto Rico by Section 39 thereof, are void because the Legislature of Puerto Rico had no power to enact them and because both Acts violate Organic Act provisions as to the subject and titles of bills and amendment of laws; and that no jurisdiction is vested in the Supreme Court of *quo warranto* proceedings based on acts of a corporation *ultra vires* its articles of incorporation. (Assignment of errors, R. 306-310.) In the brief filed by Petitioner as appellee in the Circuit Court of Appeals, the theory that the proceeding was in part based upon the violation of any statute of Puerto Rico was for the first time suggested, and the claim for the first time advanced that the allegations contained in the Information were susceptible of such a construction.

The opinion of the Circuit Court of Appeals and the dissenting opinion of Judge Peters are reported in 106 F. (2d) 754. The court held that Acts No. 33 and No. 47 are invalid for the reason that they amend and enlarge the scope of the Joint Resolution of Congress of May 1, 1900, and because they confer jurisdiction upon the Supreme Court of Puerto Rico to impose penalties for violations of that Resolution. It held that the Supreme Court of Puerto Rico is a statutory court and its jurisdiction defined by statute; that unless a case comes strictly within the statute defining its jurisdiction, it cannot proceed; and that the allegation in the Information that the Respondent is violating a prohibition contained in its Articles of Incorporation

is not an allegation that Respondent is violating a statute of Puerto Rico or of a ground resting upon which jurisdiction in *Quo Warranto* proceedings is vested in the Supreme Court of Puerto Rico by Act No. 47. Whether or not the provisions of Act No. 47 which make violations of Puerto Rican statutes a separate ground for *Quo Warranto* are separable from the invalid provisions, the court holds that the allegations of the Information are insufficient to constitute a good charge upon this separate ground. In his dissenting opinion Judge Peters agreed with the principles of law enunciated in the majority opinion but felt that a somewhat less technical application of them would result in sustaining the action of the local court. He thought that by permissible construction the words "in violation of the express provisions of the Organic Act of Puerto Rico or any of its statutes", found in Section 1 of Act No. 47, could be made to read "in violation of restrictions imposed upon it (the corporation) by the Legislature as required by the express provisions of the Organic Act of Puerto Rico or any of its statutes", but, in any event, that the words "or any of its statutes" in the section of the Act mentioned created a distinct ground for *Quo Warranto* separable from the other and invalid provisions of the Act.

In the final paragraph of the majority opinion, it is said:

> "We do not hold that the People of Puerto Rico has no redress as against the holding of so much agricultural land as contrary to valid statutes of Puerto Rico in the event it proceeds according to law, or through the federal government proceeding for a violation of its laws" (R. 329).

The judgment of the Supreme Court of Puerto Rico is reversed expressly without prejudice to future proceedings

under valid statutes or in the Federal courts based on a violation of Section 39 of the Organic Act or Section 752 of Title 48, U. S. C.

Statutes Involved.

Statutes deemed to be applicable are set out in full or in part in the Appendix.

POINT I.

Act No. 33 of the Legislature of Puerto Rico, approved July 22, 1935, and Act No. 47 of the Legislature of Puerto Rico, approved August 7, 1935, are void because the Legislature of Puerto Rico had no power to enact them, and because they violate provisions of the Organic Law of Puerto Rico.

(a) The Acts amend and change a Federal Statute and in so doing usurp an exclusive power of the Congress of the United States.

(b) The Acts attempt to confer jurisdiction to impose penalties for violations of Federal laws upon Insular Courts and in so doing not only legislate upon matters not within the legislative domain of the Legislature of Puerto Rico, but also violate express provisions of Federal laws.

(c) Assuming that the Legislature of Puerto Rico had power to amend a Federal law, the attempted amendment of the Joint Resolution of Congress No. 23, approved May 1, 1900, and of Section 39 of the Organic Act of Puerto Rico, by these statutes, is ineffective for failure to comply with the provisions of Section 34 of the Organic Act of Puerto Rico. (See Point III, *infra*, p. 40.)

(d) The penalties created by Act No. 47 convert the Act into an *ex post facto* law.

(e) The language of Act No. 47 defining the grounds for *Quo Warranto* of which the Supreme Court of Puerto Rico is given jurisdiction is so vague and uncertain as to make the act inoperative and void.

(a)

It was the intention of the Legislature of Puerto Rico to amend the Joint Resolution of Congress continued in effect by Section 39 of the Organic Act of Puerto Rico. The language of Act No. 33 and of Section 1 of Act No. 47 clearly fixes and limits the grant of jurisdiction to the Supreme Court of Puerto Rico. The particular words, "Section 752, Title 48, United States Code", and "the Organic Act of Puerto Rico", have plain and well-settled meanings; but, if resort may be had to extrinsic aid to ascertain the intention of the Legislature, the only sources available are to be found in other legislation upon the same subject, and particularly the several Statutes passed at the same Session which form a body of related legislation obedient to one general plan. These Statutes, Acts Nos. 33, 44, 47 and 48, all passed at the Special Session of 1935, are alleged in the Amended Information to declare the public policy of The People of Puerto Rico. The decisions of the Supreme Court of Puerto Rico which were offered in evidence by Petitioner and are printed as Plaintiff's Exhibits Nos. 5, 6, 7, 8 and 9 (R. 198, 198, 199, 203, 204) are also available. (Relevant parts of Acts Nos. 33, 44, 47 and 48 appear in the Appendix, pp. 82, 83, 85, 89, and Sec. 39 of the Organic Act appears in the Appendix at p. 73.)

These statutes and decisions disclose that the notion obtained generally that in order to disperse large landholdings by sugar corporations in Puerto Rico deemed to be in

excess of the limitation imposed on the Legislature of Puerto Rico by the Joint Resolution of Congress in legislating corporate charters or franchises, it was necessary to add penalty clauses to the Joint Resolution itself and the further notion that the Joint Resolution was in some way so directed to the corporations themselves as to be susceptible of violation by such corporations. In *Harry N. Baetjer, et al.* v. *Registrar of Property of Guayama*, decided June 14, 1935 (R. 204-228), the Supreme Court of Puerto Rico declares that more than twenty years before it had pointed out the remedy open to Insular authorities to cure excess landholdings by corporations. It said:

> "The Federal and the Insular Executive and Legislative Powers, and the community in general were advised. They are the ones who are called upon to act" (R. 224).

This advice, according to the court, was first conveyed in the opinion in *Compañia Azucarera de Carolina* v. *Registrar of Property*, 19 P. R. R. 143, decided February 27, 1913 (R. 188-198), as follows:

> "The Organic Act in section 21 provides that the Attorney General will have all the power and discharge all the duties provided by law for an attorney of the Territories of the United States, in so far as the same are not locally inapplicable.
>
> And by section 771 of the Revised Statutes of the United States, among other duties it is made the duty of every district attorney to prosecute all civil actions in which the United States are concerned; and by other sections attorneys for the Territories are given the same powers as the United States district attorneys, so that its provisions would seem to determine who is the officer who shall look after the interest of Puerto Rico and who shall bring actions to recover any fine of forfeiture.

Moreover, by section 73, of the Political Code, as it has been amended by the laws of 1906, it is provided that the Attorney General, upon the request of the Commissioner of the Interior, shall institute suits for the discovery of all immovable and movable property to which The People of Puerto Rico may be entitled under the laws of escheat, or in and to which it has any other claim.

So that ample provision is made in the law by which any violation of the Organic Act may be thoroughly investigated and prosecuted by the Attorney General. If there is any doubt how far the powers of the registrar extend, it is made clear by the provisions of the Organic Act and by section 73 of the Political Code. The Attorney General is the exclusive officer in whom is confided the right to initiate proceedings for escheat or attack the right of a corporation to hold land. Without some such judicial or quasi-judicial proceedings a corporation might be deprived of some of its property rights without due process of law" (R., 196).

The Supreme Court thus as early as 1913 considered that the remedy, whatever form it may take, is for a "violation" of the Organic Act.

The Concurrent Resolution of the House and Senate of the Legislative Assembly of Puerto Rico, February 13, 1935, printed as Plaintiff's Exhibit 15 at pages 255-262 of the Record, proposed that Congress authorize the Legislative Assembly of Puerto Rico to levy a progressive land tax on estates exceeding 500 acres as a means of compelling corporations holding lands in excess of 500 acres to dispose thereof (R. 260). The Concurrent Resolution points out the fact that entities other than corporations are holding lands in excess of 500 acres and expresses the desire of the Legislature that the provisions of the Joint Resolution limiting land holdings should be extended by Congress to

include such entities and individuals as well. Congress took no action.

The Foraker Act which is also the first Organic Act of Puerto Rico, continued in force the Code of Commerce which provided for the organization and prescribed the powers of those associations of individuals and capital called "sociedades", a term usually translated in English as "partnerships". The partnerships so authorized possessed characteristics practically identical with the full liability and limited liability partnerships known to the Common Law and existing in the several States, except as to the kind of "sociedad" denominated "sociedad anonima por acciones" which possessed all of the characteristics of corporations in Continental United States. At the time that the Joint Resolution was passed, lands aggregating in many instances several thousand acres were owned by partnerships or "sociedades" formed under the provisions of the Code of Commerce or the Civil Code of Puerto Rico, and are today so owned by such partnerships, all of which under the laws of Puerto Rico are entities.

To the legislative mind the defect or mischief in the existing laws to be remedied was the absence of penalty provisions in the Joint Resolution of Congress without which it was felt excess landholdings by corporations could not be effectively dealt with and prevented. The first Act of the Legislature enacted to effect this remedy was Act No. 33 by which what was deemed to be a new ground of *Quo Warranto*, namely, "violations of the provisions of Section 752, Title 48, U. S. C.", was created, and of *Quo Warranto* proceedings based on this new ground exclusive jurisdiction was vested in the Supreme Court of Puerto Rico.

The Legislature, however, wished to impose severe penalties upon corporations violating Section 752 of Title 48,

U. S. C., and also to facilitate the acquisition of lands, sugar centrals and factories for the purposes specified in Act No. 44 then in process of passage and shortly to be passed at the same Session.

For this purpose Act No. 47 was enacted. The violations made a ground of *Quo Warranto* in this Act are violations of the "express provisions of the Organic Act of Puerto Rico or of any of its statutes". The Supreme Court in the judgment appealed from, and Petitioner seems to be of the opinion that violations of express provisions of the Organic Act of Puerto Rico in Act No. 47 mean the same thing as violations of Section 752 of Title 48, U. S. C. in Act No. 33, and that both mean the Joint Resolution of May 1, 1900. It may well be that in passing Act No. 47 of 1935 the Legislature intended to supersede and thereby repeal Act No. 33 of 1935. The intention of the Legislature cannot be determined from the language used in either act. If Act No. 47 did effect a repeal of Act No. 33, then in such event the entire case of Petitioner must necessarily rest on Act No. 47.

Upon the assumption of Petitioner, to the ground of *Quo Warranto* created by Act No. 33, Act No. 47 added that of violation "of any of its statutes". It is possible that among the statutes contemplated in this omnibus provision, Act No. 48, approved the same day as Act No. 47, was included. This latter Act is entitled "An Act to impose penal sanction for violation of provisions contained in Section 3 of the Joint Resolution of the Congress of the United States of May 1, 1900 regarding the purchase, sale or possession of real property in excess of five hundred (500) acres, and for other purposes". Section 2 of the Act prescribes the penalties for violations by corporations. It would seem clear that the Legislature in Act No. 48 employed the words "violations of provisions contained in Section 3 of

the Joint Resolution of the Congress of the United States of May 1, 1900" with the same meaning as violations of the express provisions of the Organic Act of Puerto Rico in Act No. 47 and "violations of the provisions of Section 752, Title 48, U. S. C." in Act No. 33. As to proceedings of *Quo Warranto* based on the grounds of the exercise of rights, performance of acts or making of contracts "in violation of the express provisions of the Organic Act of Puerto Rico, or of any of its statutes", Act No. 47, like Act No. 33, we submit, attempts to vest exclusive jurisdiction in the Supreme Court of Puerto Rico.

Of *quo warranto* proceedings based on all other grounds the District Courts retain the jurisdiction vested in them by the original Quo Warranto Act which Act No. 47 amends.

It is submitted that the suggestion of Judge Peters to the effect that the words of Section 1 of Act No. 47 reading:

> "Whenever a corporation * * * exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes"

may by construction be changed to read:

> "Whenever any corporation * * * exercises rights, performs acts, or makes contracts in violation of [restrictions imposed upon it by the Legislature as required by] the express provisions of the Organic Act of Puerto Rico or of any of its statutes", (R. 331),

is untenable, among other reasons, because it in effect elides the words "or of any of its statutes" by making them surplusage; because upon the same theory of construction violation of the Joint Resolution in Act No. 48 and violations of Section 752 of Title 48 U. S. C. A. become violations of statutory restrictions imposed on corporations by the Leg-

islature as required by such Joint Resolution and Section 752, and because it is contrary to the legislative theory and intention as disclosed by contemporaneous statutes. The Joint Resolution of May 1, 1900, which is continued in force or incorporated in the present Organic Act of Puerto Rico, in and by Section 39 of that act, was not addressed to corporations, nor did it contain provisions which corporations could violate, but Acts Nos. 33, 47 and 48 were drafted and enacted by the Legislature of Puerto Rico under a persistent misconception both as to the meaning and purpose of the Organic Act provisions.

Consistently with this theory the Supreme Court of Puerto Rico in the judgment appealed from specifically found the Respondent guilty of violating the provisions of Joint Resolution No. 23 of the Congress of the United States and of Section 39 of the Organic Law of Puerto Rico (R., 305). It did not find it guilty of violation of any Statute of Puerto Rico. In passing, it may be noted that the words "Joint Resolution of Congress" appear only in Act No. 48. The Joint Resolution is not mentioned either in Act No. 33 or in Act No. 47. Literally the Court finds Respondent guilty of the offenses defined in Act No. 48 rather than of the violations specified in Act. No. 47.

In enacting the Organic Act of Puerto Rico, the Congress was acting as a national and not as a local legislature. It both created the territorial entity and enacted its fundamental law. This power of Congress to create territories and enact Organic Acts for them, conferred by the Constitution, is in itself in the nature of a non-delegable power. It seems obvious that as the Legislature of a State is without power to amend the Constitution of a State, a power which may only be exercised by its people, so the power to amend or change the Organic Act of Puerto Rico can only be exercised by the Congress. We suggest that there is

this fundamental difference between the Federal law considered in *People of Puerto Rico* v. *Shell Co.*, 302 U. S. 253, and the Organic Act of Puerto Rico: that Congress could, as this Court held that it did, delegate power to Puerto Rico to legislate a law or laws similar to the Sherman Act and covering practically the same field, but that the Congress cannot delegate to Puerto Rico the power to make its Organic Act.

Examining the grant of legislative powers under the Organic Act of the Philippine Islands, similar to those contained in the Organic Act of Puerto Rico, in *Posadas* v. *National City Bank*, 296 U. S. 497, 501, the Supreme Court said:

> "* * * The Organic Act of 1916 provides:
>
> "'Sec. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act.
>
> "'Sec. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States.
>
> "(Section 6 obviously is to be taken distributively—that is to say, as conferring power on the local legislature to deal only with local laws. It, of course, confers no power on the local legislature to alter, amend or repeal an act of Congress.)"

Similar legislation by the Territory of Alaska was declared invalid as an amendment of an Act of Congress in *Auk Bay Salmon Canning Co.* v. *United States*, 300 Fed. 907 (C. C. A. 9th), in which the Court said at page 910:

> "We see no escape from the conclusion that to make the changes in those laws which were attempted to be made by the territorial legislature was to alter, amend and to some extent repeal the acts of Congress relating to the same subject and was within the prohibition of the Organic Act. To extend the period of the closed season, to enlarge the area affected by it, and to increase the penalties for violation of the fishing regulations was to amend and alter the existing law. This conclusion is not obviated by the declaration therein contained that the statute shall not be construed as in any wise to alter, amend, modify or repeal any of the fish laws, and that its purpose is only to provide for further and additional regulations for additional protection to the salmon and insure a future supply thereof, and it is not ground for holding otherwise that the alterations and amendments did in fact result only in greater protection to the fish and were in the interests of and operated to the welfare of the inhabitants of Alaska. The question is what is, and not what ought to be, the law."

Further discussion of this question seems to be unnecessary because we do not understand that either counsel for Petitioner or the *amicus curiae* deny that the Legislature of Puerto Rico cannot amend a law of the United States or that the Organic Act of Puerto Rico is a law of the United States. They contend that Acts Nos. 33 and 47 do not amend the Joint Resolution of Congress of May 1, 1900 or Section 39 of the Organic Act of Puerto Rico.

Two theories are suggested to sustain the validity of these Statutes: (1) that the "provisions of Section 752, Title 48, U. S. C." in Act No. 33 and the "express provisions of the Organic Act of Puerto Rico" in Act No. 47 mean "provisions" of the local Corporation Law of 1911 or the charter of corporations organized thereunder; (2)

that the provisions of the laws mentioned are incorporated by reference in and by Acts Nos. 33 and 47. The answers to these theories are several. We have shown that the intention of the Legislature of Puerto Rico was to amend these laws of the United States. Whether or not these new theories are open to consideration here (Point II) they will be more fully answered hereafter.

Both of these theories import a change in the language of the Joint Resolution or its equivalent in Section 39 of the Organic Act and Section 752, Title 48, U. S. C. If the language of the Joint Resolution is left unchanged, quite obviously there can be no violation by a corporation, and this would be a sufficient answer to a proceeding in *Quo Warranto* brought under either Statute. There would be no violation upon which the action of the Court could be invoked. It is only when the language of the Joint Resolution, together with its meaning and purpose, is changed that either Act No. 33 or Act No. 47 can have any legal efficacy.

The mandate addressed to the Legislature in Section 3 of the Joint Resolution must be converted into a mandate addressed to corporations thereafter created by the Legislature in order that there may be any violation of such provisions, and a change in such provisions constitutes amendment. By either theory of construction contended for, these provisions of the Joint Resolution are first so amended as to constitute a mandate or prohibition directed to corporations that the latter may violate, and to the section thus amended penalties are attached. In short, so construed, the Legislature of Puerto Rico changes a law which is a limitation upon its own powers into a local law and a penal statute. It changes the very nature of the law acted upon. In short, it rests its construction of Acts 33 and 47 on provisions argued to be implicit, rather than

express, in the Joint Resolution or Section 39 of the Organic Act.

The court below correctly held that Acts Nos. 33 and 47 did amend and enlarge the scope of the Joint Resolution of Congress of May 1, 1900.

Either theory, as above pointed out, makes the words "or of any of its statutes" in Act No. 47 redundant and meaningless.

That Acts Nos. 33 and 47 as construed or attempted to be construed by the Petitioner or *amicus curiae* constitute amendments of the Joint Resolution is settled by authority: *In re Lovett*, 2 F. (2d) 307; *In re Barlow*, 98 F. 86; *People* v. *Friederich*, 67 Col. 69, 185 Pac. 657; *People* v. *Buffalo Cold Storage Co.*, 113 Misc. 479, 185 N. Y. Supp. 790; *Posadas* v. *National City Bank*, 296 U. S. 497, *supra*; *Ank Bay Salmon Canning Co.* v. *United States*, 300 Fed. 907, *supra*; 59 *Corpus Juris* 851.

The Solicitor General states in his brief:

> "By Act of March 1, 1902, the insular district courts were given jurisdiction of *quo warranto* proceedings against any corporation which 'does or omits any act' amounting 'to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law,' a jurisdiction broad enough in terms to extend to cases of violation of a local statute or the Joint Resolution."

If this means that he contends that the Supreme Court of Puerto Rico by Acts Nos. 33 and 47 is given a jurisdiction theretofore possessed by the District Courts, we do not agree. We believe the District Courts retain the jurisdiction of all proceedings conferred by the original *Quo Warranto* Act before amendments, which did not include proceedings based on violations of the Joint Resolution or the Organic Act. We do not agree that District Courts had jurisdiction of such proceedings based on the grounds

upon which the exclusive jurisdiction of the Supreme Court of Puerto Rico is predicated in Acts Nos. 33 and 47 because such grounds were provided as new grounds for *Quo Warranto*, nor that such was the legislative construction of the *Quo Warranto* Law as it stood before amendment. If a corporation could violate the provisions of the Joint Resolution prior to Acts Nos. 33 and 47, it follows that any proceeding to forfeit its charter or impose any penalty must necessarily have been instituted by Federal authorities and in a Federal court.

To save these statutes from invalidity the Court is asked to construe the statute that by its plain language refers to an Act of Congress as applying only to Puerto Rican statutory laws; to introduce words of limitation into both statutes. Such a construction of statutes this Court on other occasions has declined to make.

Trade Mark Cases, 100 U. S. 82;
Butts v. *Merchants and Miners Transportation Co.*, 230 U. S. 126;
Yu Cong Eng v. *Trinidad*, 271 U. S. 500;
Asiatic Petroleum Co. v. *Collector*, 297 U. S. 666;
Small Co. v. *American Sugar Refining Co.*, 267 U. S. 233, 239, 240.

See also,

Helvering v. *Wood*, decided by this Court February 26, 1940 (No. 384, October Term, 1939).

(b)

The Acts attempt to confer jurisdiction to impose penalties for violations of Federal laws upon Insular Courts and in so doing not only legislate upon matters not within the legislative domain of the Legislature of Puerto Rico, but also violate express provisions of Federal laws.

For violations of the Joint Resolution of Congress and of the Organic Act of Puerto Rico, Acts Nos. 33 and 47

provide penalties and confer jurisdiction upon the Supreme Court of Puerto Rico to impose them.

Paragraph 9 of Section 41 of Title 28, U. S. C. confers original jurisdiction of actions and proceedings to decree and enforce penalties and confiscations arising under any law of the United States upon courts of the United States. Section 371 of the same Title provides:

> "The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the courts of the several states:
>
> First:—
>
> Second:—Of all suits for penalties and forfeitures incurred under the laws of the United States."

The penalty here is created by an Act of Puerto Rico, but the law to which it attaches is a law of the United States. *If the Federal law disappeared, there would be nothing upon which these statutes could operate.*

Of all suits, prosecutions and proceedings specified in Section 256 of the Judicial Code (28 U. S. C., sec. 371) original jurisdiction is vested in district courts of the United States by Section 41 of Title 28 U. S. C.

Section 41 of the Organic Act of Puerto Rico confers upon the District Court of the United States for Puerto Rico jurisdiction of all cases cognizable in district courts of the United States.

Section 42 of the Organic Act of Puerto Rico provides:

> "The laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters or proceedings as between the courts of the United States and the Courts of the several states shall govern in such matters and proceedings as between the District Court of the United States and the courts of Puerto Rico."

By a local act approved March 12, 1903, entitled "An Act establishing the Supreme Court of Puerto Rico as a court of appeals" (Appendix, p. 78) it was made solely a court of appeals and not of cassation. As the District Court of the United States for Puerto Rico is vested with the same original jurisdiction as that vested in district courts of the United States as to all suits, prosecutions and proceedings specified by Section 256 of the Judicial Code, jurisdiction of the same matters by any other court in Puerto Rico is necessarily excluded. The court will take judicial knowledge that the District Court of the United States for Puerto Rico has since its creation taken exclusive jurisdiction in Puerto Rico of all cases comprehended in Section 256 and that no Insular Court has taken jurisdiction of such cases.

Section 40 of the Organic Act provides:

> "* * * the Legislature of Puerto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico."

The attempt, therefore, of the Petitioner by the instant statutes to vest jurisdiction in the Supreme Court of Puerto Rico to impose penalties for violations of a law of the United States not only violates Section 256 of the Judicial Code but likewise Section 40 of the Organic Act of Puerto Rico, in that it impairs the jurisdiction of the District Court of the United States for Puerto Rico.

Section 42 of the Organic Act of Puerto Rico above quoted answers the contention of counsel for Petitioner that Section 256 of the Judicial Code is not applicable because it was intended to apply only as between courts of the United States and courts of the several states.

The Supreme Court of Puerto Rico in a careful opinion in *People* v. *Torres*, 28 P. R. R. 783, held that Insular Courts have no jurisdiction of prosecutions instituted for violations of certain Organic Act provisions. The Solicitor General in his brief in support of the petition for *certiorari* agrees with Respondent that the *Shell* case holds that Puerto Rico could not confer jurisdiction on Insular Courts of proceedings to enforce the Sherman Anti-Trust Act. He said:

> "In *Puerto Rico* v. *The Shell Co.*, 302 U. S. 253, the Court held that the fact that the Sherman Anti-trust Act was applicable to Puerto Rico did not preclude adoption by the legislature of Puerto Rico and enforcement in the local courts of a local anti-trust act substantially similar to the Sherman Act. The Court was clearly of the opinion, however, that the Puerto Rican courts could not enforce the Sherman Antitrust Act but only its local equivalent."

The Solicitor General now relies on a series of cases beginning with *Houston* v. *Moore*, 5 Wheaton 1, as authority for the proposition that the Insular Legislature and courts have power to enforce civil or prohibitory legislation of Congress. It is true that in *Houston* v. *Moore* the court sustained an act of Pennsylvania giving jurisdiction to its courts to enforce the Federal penalties for delinquency under a Federal militia law. But it should be noted that Mr. Justice Story read a vigorous dissent (in which one of the Justices concurred), the reasoning of which (cf. page 75) is persuasive. And Professor Warren's article in the 38th Harvard Law Review, page 545,—relied on by the Solicitor General—seems to indicate (p. 594) that Mr. Justice Story's views were probably the views of the court some fifteen or twenty years later and have continued to be the views of the court. And again Professor Warren at

page 597 states that he is of the opinion that there may be reason to support the jurisdiction of the state courts in such respects only if (1) Congress shall refrain from making the Federal court jurisdiction exclusive, and (2) if Congress shall signify its desire and intention that the state courts may exercise concurrent jurisdiction and (3) that the state courts are willing and allowed by their state legislation to exercise it. But, as shown above, the jurisdiction of the Federal courts in suits involving penalties and forfeitures under the laws of the United States is conferred exclusively on the courts of the United States (Section 371, Title 48 U. S. C. See also Sections 40, 41 and 42 of the Organic Act, *supra*).

(c)

Assuming that the Legislature of Puerto Rico had power to amend a Federal law, the attempted amendment of the Joint Resolution of Congress No. 23, approved May 1, 1900, and of Section 39 of the Organic Act of Puerto Rico, by these statutes, is ineffective for failure to comply with the provisions of Section 34 of the Organic Act of Puerto Rico. (See Point III, *infra*.)

(d)

The penalties created by Act No. 47 convert the Act into an *ex post facto* law in violation of Section 2 of the Organic Act of Puerto Rico.

At the time Respondent was incorporated and under the laws then existing the violation of the Joint Resolution of Congress of May 1, 1900 was not a ground upon which *Quo Warranto* could be instituted and forfeiture of the corporate franchise decreed in an Insular Court nor were penalties attached by Act No. 47 for violation of the Joint Resolution in existence. The consequence and the only consequence of the doing or omission of any act which

amounted to a surrender or forfeiture of its rights and privileges as the corporation "or the exercise of rights not conferred by law", which were the then existing grounds upon which the proceeding of *Quo Warranto* could be based, was ouster from the franchise and fine, or, in the discretion of the Court, a fine only. *Quo Warranto* was an action of a purely civil nature, as it was and is in most other jurisdictions in the United States. Upon judgment of ouster the corporation was dissolved and after payment of the debts the property was distributed among the stockholders. The effect and consequences of a *Quo Warranto* proceeding of this nature and the limitations upon the judgment had been repeatedly declared by the courts. The following states the accepted view of the nature and consequences of the modern remedy of *Quo Warranto*.

> "When we examine the first of these grounds, we find nothing in the books to support an idea that the abuse of a corporate franchise occasions a forfeiture of land or goods, rights or credits, or in fact, occasions any other forfeiture but the franchises themselves. The consequence of a breach of the implied condition on which their liberties were granted, was not that they should forfeit their property or possessions if they abused their franchises, but only that they should forfeit their franchises • • •.
>
> Consequently the judgment could not direct a seizure of corporate possessions, as a forfeiture for the violation of the charter."
>
> *State Bank* v. *State*, 1 Blackford (Ind.), 267, 281, 12 Am. Decisions, 234, 235.

The decisions of the Supreme Court of California are commonly followed in Puerto Rico because many of its codes and statutes derive from the laws of that state.

In *Havemeyer* v. *Superior Court*, 84 Cal. 327, 379, the Supreme Court of California said:

> "What is forfeited to the state, and all that is forfeited, is the charter,—the right to be a corporation; and this is presumed solely upon the ground that the condition upon which it was granted has been violated. * * * If this condition is broken, the charter which the state has given is taken back by the state; but the property which the corporation has acquired with its own means goes to those who have paid for it, and they have the right to deal with it just as others similarly situated may deal with their property."

Without any notice of intent to change the nature of the act amended, without any change in its title or definition, there was inserted in Section 2 of the *Quo Warranto* Act, by Act No. 47 the following provision:

> "When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, the People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf a confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered."
>
> "In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

Section 6 of the *Quo Warranto* Act was amended to read as follows:

> "Whenever in the opinion of the Court it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express

provisions thereof, the judgment entered shall decree the dissolution of the defendant entity if it be a domestic corporation, the prohibition to continue doing business in the country if a foreign corporation, the nullity of acts done and contracts made by the defendant corporation or entity, and in addition, the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico shall be decreed; and when a decree of nullity affects real property and the People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings."*

The Petitioner, the People of Puerto Rico, is thus given an option which it may exercise within six months from the date on which the final judgment is rendered to institute in the same proceeding; the confiscation or alienation at public auction of the real property in Puerto Rico of any corporation against which the judgment of ouster runs. By the mandatory provisions of Section 6 as amended the judgment must also decree the nullity of all acts done and contracts made by the defendant corporation or entity and also the cancellation of entries or registrations made by the corporation in the public registries of Puerto Rico. These penalties must be imposed without regard to the gravity of the acts of the corporation defendant or the extent or importance of its infraction of any law. The corporation at the same time has all of its titles cancelled and loses all of its property and nothing remains for the stockholders. Among the contracts and rights thus to be annulled the greater part may be contracts perfectly valid

* We submit that this section was inaccurately translated from the Spanish in the official text (R., p. 240). We believe that the change we make in the above translation is correct. The Spanish text controls (Civil Code of Puerto Rico, Sec. 13, App., p. 78), as the bill was presented in Spanish.

and legal at the time they were made and in nowise connected with the particular offense for which the judgment of ouster is given, and inevitably the rights of other parties to the contracts would be affected. Until the option for the confiscation or alienation at public auction of the property of Respondent corporation is exercised, which possibly may not be until shortly before the expiration of six months from the date of the final judgment, it is impossible for the directors as liquidators of the corporation to dispose of its property, pay its creditors and distribute the balance among the stockholders, for certainly no one would purchase property prior to the expiration of the six months' period with the notice of *lis pendens* staring him in the face and the law advising him that such property may be confiscated or sold upon demand of the People of Puerto Rico. In the meantime, the properties cannot be operated, remain unproductive and diminish in value. As to the penalties created by the amendment of Section 6 of the *Quo Warranto* Law, it may be said that the Supreme Court of Puerto Rico in its judgment has not decreed any of these things. In view of the refusal of the Supreme Court of Puerto Rico to pass upon the validity of these penalties, its refusal to cancel notices of *lis pendens* and its silence as to what if anything may be done in the execution of judgment, Respondent was impelled to appeal from the judgment in this case. As it seemed to Respondent, the attitude of the representatives of the Petitioner was that it was unnecessary for it to decide whether the People of Puerto Rico would elect to alienate or confiscate real property until sometime after the judgment was entered or to request the imposition of the other penalties of nullity of contracts and cancellation of entries in the registries of property. The trial court declined to construe Act No. 47 in this respect.

Another ground upon which the apprehension of the Respondent as to the later imposition of penalties was based is a matter of record in the court below but is not found in the printed record of this case. It is, nevertheless, a fact and a record of which it is believed the court may take notice, as evidencing the intention of the Petitioner in this regard. Shortly after the entry of the judgment in this case Petitioner filed a petition for the appointment of a receiver upon which action has been postponed by reason of the supersedeas granted in connection with the appeal. *Havemeyer* v. *Superior Court*, 84 Cal. 327, *supra*, a decision which it is believed would have been followed in Puerto Rico prior to the enactment of Acts Nos. 33 and 47, holds that a receiver may not be appointed in a *Quo Warranto* proceeding, with a full examination and discussion of the law as to why such an appointment cannot be made. Such an application now must proceed upon the theory that the penalties provided create such a change in the law as to make the appointment of a receiver necessary. It is submitted that the penalties enacted convert the *Quo Warranto* Law of Puerto Rico into an *ex post facto* law. It is unimportant that the proceeding in which the penalties are imposed has a civil aspect.

Cooley, Constitutional Limitations, 8th Ed. 545;
United States v. *Hughes*, 8 Ben. 29, 26 Fed. Cas. No. 15416;
Burgess v. *Salmon*, 97 U. S. 381, 385;
United States v. *Hall*, 2 Wash. C. C. 366, 26 Fed. Cas. No. 15283;
French v. *Deane*, 24 L. R. A. 387, 19 Colo. 504;
Boyd v. *United States*, 116 U. S. 616, 634;
Atchinson, T. & S. F. Ry. Co. v. *United States*, 172 F. 194, (C. C. A. 7th, 1909).

The Petitioner says that it did not ask for the imposition of any of these penalties in the prayer of the Information. Of course, it was not necessary to do so since the duty to impose the penalties was mandatory. *Standard Oil v. Missouri*, 224 U. S. 270.

(e)

The language of Act No. 47 defining the grounds for *Quo Warranto* of which the Supreme Court of Puerto Rico is given jurisdiction is so vague and uncertain as to make the act inoperative and void.

The contention that the provisions of Section 1 of Act No. 47 offended against the rule of certainty and definiteness was stated in Respondent's brief in the Circuit Court of Appeals, and assumed particular importance when Petitioner proposed its new theory that the Information set out as a cause or ground of *Quo Warranto* jurisdiction the violation of a statute or statutes of Puerto Rico. We think that the language; "violation of the express provisions * * * of any of its statutes" is too indefinite to apprise the corporation of the grounds and causes for which its corporate charter may be forfeited and the severe penalties of the Act imposed.

Corporations must first search the laws of Puerto Rico for statutes that may be violated by corporations, which involves the construction of such statutes, at the hazard of losing both franchises and property if they err as to the applicability of such statutes or their proper construction, and this is from a practical standpoint an impossible task. Actually, they have no rule, guide or standard of conduct. Such a statute violates the due process clause of the Organic Act.

Smith v. Cahoon, 283 U. S. 553;

Connally v. *General Construction Co.*, 269 U. S. 385.

Liberty Highway Co. v. *Michigan Public Utilities Commission*, 294 Fed. 703 (D. C. Mich.);

Auers v. *Phillips Petroleum Co.*, 25 Fed. Supp. 458 (D. C. Tex.);

State v. *Northwest Poultry & Egg Co.*, 281 N. W. 753 (Minn.);

Denner v. *Weiss*, 122 S. W. (2d) 922 (Mo.);

American Stores Co. v. *Boardman*, 46 Dauph. Co. (Pa.) 334;

People v. *O'Gorman*, 274 N. Y. 284.

The statute devolves upon the courts the *legislative* duty of declaring what acts or omissions are "violations". In this respect we invite the attention of this Court to the reasoning of the opinion in:

State v. *Gaster*, 45 La. Ann. 636.

There is no statute or law of Puerto Rico defining violations of statutes or violations of express provisions of any of its statutes. By the construction of the words "violations of express provisions of the Organic Act of Puerto Rico", contended for by counsel for Petitioner and *amicus curiae*, as shown in the discussion of subdivision (a) of this point, by some sort of constructive alchemy, the word "express" is transmuted into "implied".

POINT II.

Petitioner will not be heard to urge here theories in support of the jurisdiction of the Supreme Court of Puerto Rico and in support of the validity of Acts Nos. 33 and 47 not presented to or litigated in the Supreme Court of Puerto Rico, nor to present here contentions not presented to that court.

Specifically, Petitioner should not be heard to urge here:

(1) That Acts Nos. 33 and 47 of the Puerto Rico Special Session of 1935 conferred jurisdiction on the Supreme Court of Puerto Rico to enforce Act No. 30 of the Puerto Rico Laws of 1911, as amended, or any other Puerto Rico statute;

(2) That there was litigated in the Supreme Court of Puerto Rico any issue relating to the enforcement of said Act No. 30 or any other local statute, or that the Supreme Court by its decree enforced or purported to enforce any such local statute;

(3) That Acts Nos. 33 and 47 incorporate by reference the provisions of Joint Resolution No. 23 or any provisions of the Organic Act;

(4) That the Insular Courts of Puerto Rico are courts of the United States.

The first two of the above enumerated contentions were advanced by Petitioner for the first time in the Circuit Court of Appeals and at that time Respondent objected to their consideration by the court. The third and fourth contentions appear to be urged for the first time in this Court. It is a familiar concept of appellate practice that parties should not be permitted to change the fundamental

theories of their case for the first time on appeal, nor to advance contentions on appeal that were not presented to the court below. The appellate court is entitled to know what was or would have been the views of the lower court upon the new theories or questions presented, and the opposing party as well is entitled to the opportunity of meeting in the lower court the situation created by those theories or contentions. We submit that the failure to present the contentions above mentioned in the Insular Court was not due—as suggested by Judge Peters in his dissent—to the infelicities of the pleading, but was due to the deliberate adoption by the Petitioner and the court of the theory upon which the case was pleaded, tried and decided.

The complaint (R., 2, *et seq.*) and the amended complaint (R., 44, *et seq.*) are identical except for the elimination in the amended complaint of the conclusion of law appearing in the preamble of the original complaint that the Respondent is no longer entitled to its franchise and privileges. We, therefore, discuss the amended complaint. In this short document, which occupies only three pages of the record (apart from exhibits) it appears in preliminary paragraphs (c) and (d) and in later paragraph 1 that the fundamental statutory provision sought to be enforced was Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900. In said paragraph 1 dealing with the public policy of Puerto Rico there are mentioned administrative statutes of Puerto Rico designed to administer and enforce Joint Resolution No. 23 and also statutes of the same character introduced and not passed by the local legislature; but nowhere is there any reference to the Puerto Rico law relating to corporations as embodied in Act No. 30 of the Laws of 1911 or any other local statute pertaining to corporations. Reference to the arti-

cles of incorporation of Respondent is made as "in conformity with the restrictions established in Section 3 of the Joint Resolution" (paragraph (c)). Again in paragraph (d) this restriction is linked to the Joint Resolution. We entertain no doubt that the pleader omitted reference to Puerto Rico substantive law not from inadvertence, *but because he conceived the theory of his case to be the enforcement of the Joint Resolution in the method provided in Acts Nos. 33 and 47.*

The challenge was met by Respondent in its demurrers to the amended complaint, and the Respondent addressed itself to this theory of the case set forth in the amended complaint (see particularly subparagraphs b, d, f, g and j of Section I and Section III of demurrers, R., 51 to 57). The demurrers were overruled on the authority of a previous decision of the Supreme Court of Puerto Rico in the *Fajardo Sugar Company* case (R., 81) and that opinion is published in the record, pp. 68 to 81. Said opinion proceeds on the theory that the Joint Resolution of Congress does not violate the rights of the defendant corporations in the *Fajardo* case nor deprive them of the equal protection of the laws, and holds that Acts Nos. 33 and 47 constitute valid remedial legislation for the enforcement of that Joint Resolution.

There was thus ample opportunity *in limine* for the People to present to the court any theory entertained by it that its case rested to any extent upon Act No. 30 of 1911 or any other local statute of substantive character. Furthermore had the proceeding been one to enforce Act No. 30, as well as the Joint Resolution, the court in deciding the demurrers would have had opportunity to require such cause of action to be separately stated. Section 104, subdivision 9, of the local Code of Civil Procedure provides that failure separately to state different causes of action may be raised by

demurrer as provided in subdivision 7 of Section 105; the latter section states as a ground of demurrer that the complaint is "ambiguous, unintelligible or uncertain" (Appendix, p. 80). It is fairly to be inferred that Respondent did not urge that such cause of action should be separately pleaded and the court did not decide that such cause of action should be separately pleaded because of the fact that nowhere in the amended complaint can reference to such cause of action be found.

It may also fairly be inferred that the Court, in overruling the fifth ground of demurrer, to wit, that several causes of action had been set out in the complaint (R., 58), found, upon an examination of the allegations of the complaint, that it set out only one cause of action; in other words, that the information did not set out a cause of action based upon violation of the Joint Resolution together with another cause of action based upon violation of statutes of Puerto Rico, or the corporate charter.

The testimony taken and evidence introduced (R., 99, *et seq.*) is directed only to the matters specified in the complaint, that is to say, matters relating to the Joint Resolution of Congress, to the compliance therewith by the corporation in its charter and to the public policy of the People of Puerto Rico as allegedly shown by numerous documents introduced in evidence (R., 130, *et seq.*). Those documents do not deal with the new arguments and theories advanced by Petitioner on appeal.

At the close of the People's case (R., 121) an elaborate motion to dismiss was filed. Again, this motion was addressed to the theory upon which the complaint was drawn and the case was tried. Upon consideration the court rendered its written opinion (R., 285 to 304). This carefully documented opinion adopts the theory of the complaint, and

nowhere purports to express an opinion upon local substantive law as contained in Act No. 30 or otherwise. The decree also follows the complaint and contains the following provisions (R., 305):

> "1. It is adjudged and decreed that the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controling 12,188 acres of land in violation of the provisions of Joint Resolution No. 23 of the Congress of the United States (31 Statutes at Large 716, U. S. C. A., Title 48, sec. 752), of Section 39 of the Organic Law of Puerto Rico and of its own articles of incorporation, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres.
>
> 2. The forfeiture and cancellation of the license of the defendant corporation and of its articles of incorporation is hereby ordered and decreed, as well as the immediate dissolution and winding up of the affairs of said corporation.
>
> 3. The defendant corporation is adjudged to pay the costs and disbursements of this proceeding, including the sum of two thousand dollars ($2,000) as attorney's fees.
>
> 4. The defendant corporation is sentenced to pay a fine in the sum of $3,000."

We have examined with care briefs filed by counsel at various stages of this litigation prior to the entry of decree herein by the Supreme Court of Puerto Rico and we have found nothing therein advancing the theories or contentions which we have enumerated above page 31.

Then as frequently happens, it must have appeared to Petitioner when the case came before the Circuit Court of

Appeals that Petitioner would have difficulty in sustaining the judgment rendered upon the theory adopted by the parties in the court below; and as may have been natural under the circumstances efforts were made to find a way in which the judgment could be sustained. It must have appeared to Petitioner that the *Shell* case, 302 U. S. 253, relied on by the court below was but a weak prop for the judgment below to lean upon and, indeed, was effective authority for reversal thereof, for as the Solicitor General has conceded in his brief as *amicus curiae* in support of the petition for certiorari, this Court in the *Shell* case "was clearly of the opinion, however, that the Puerto Rican courts could not enforce the Sherman Anti-Trust Act but only its local equivalent. See 302 U. S. at 271". We assume that a similar concession appears in the brief now before this Court of the *amicus curiae*, and the same concession is implicit in the whole brief of Petitioner. (It is true that they seek to distinguish the case on the ground that the Sherman Anti-Trust Act differs in character from the Joint Resolution.) What more natural than to seek for a local substantive law as a prop to lean upon in urging the affirmance of the judgment of the Insular Court. This, we may reasonably suppose, is the history of the injection into the case of Act No. 30 of 1911 as the basic support for the instant proceeding.

Respondent protested at the consideration of such a point by the Circuit Court of Appeals, stating in its reply brief before that court (p. 3):

> "This contention of counsel for appellee is obviously in the nature of an afterthought. No such contention was made in the lower court. The theory of counsel for appellee in the lower court is stated in the first paragraph of their brief here as follows:

> 'This case presents the question of the practical enforceability by proceedings in *quo warranto* in the Supreme Court of Puerto Rico, of the provisions of Section 3 of Joint Resolution No. 23 of the Congress, approved May 1, 1900 (31 Stat. 716; 48 U. S. Code 752), limiting to 500 acres the amount of land that may be held by a corporation engaged in agriculture in Puerto Rico, and of the validity of the statutes of Puerto Rico enacted with a view "to provide the procedural means for the enforcement of the land tenure restrictions" '".

The new contention (not accepted by the Circuit Court of Appeals) is repeated and argued at length by Petitioner (Br., pp. 41, *et seq.*) and by the *amicus curiae* both in his brief in support of the petition for certiorari (pp. 11, 12) and in his brief now before this Court.

However, it would seem that Petitioner felt the need of an anchor to windward (to vary the metaphor) in case this Court should not consider that Act No. 30 of 1911 is available to Petitioner in support of the judgment. Petitioner seeks to supply another local substantive law by advancing another new argument, to wit: that the Joint Resolution and the Organic Act are "adopted by reference" in Acts Nos. 33 and 47 (and also in Act No. 30 of 1911) and thereby became a part of the local substantive law (Petitioner's br., pp. 13, 29-32). Quite apart from Petitioner's failure to distinguish between mere "reference" and "incorporation by reference" (Point IV this brief), this novel contention should not be considered by this Court. A similar attempt to avoid the dilemma presented by the *Shell* case is found in a contention now made by Petitioner that the Insular Courts are courts of the United States and as such are appropriate tribunals to enforce the prohibitions of the Organic Act (Pet. br., p. 25).

It is obvious that these new theories and contentions are afterthoughts in a very literal sense, and we submit that this Court views with disfavor and is reluctant to consider theories and contentions injected into the case after it reaches the appellate courts. The importance of enforcing this rule of appellate procedure in the instant case is pointed very sharply by the fact that in order to consider Petitioner's argument regarding local law it would be necessary for this Court to construe the words "or of any of its statutes" in Act No. 47, and in order to sustain Petitioner's contentions it is necessary to construe those words as meaning any of the statutes of Puerto Rico. We call attention to the fact that the statute was enacted in the Spanish language, that the proceedings in the Insular Court are conducted in the Spanish language and that such court is the most appropriate court available to express an opinion in the first instance as to the meaning of the words used in this statute. No opportunity was given to it to construe the statute in this sense, and we are without benefit here of knowledge as to its views on the question. As stated in *Helvering v. Tex-Penn Oil Co.*, 300 U. S. 481, 498, "his failure earlier to present the question leaves this Court without the assistance of decision below." It is also indicated in the *Tex-Penn Oil Co.* case that the opposing party is himself deprived of the opportunity to defend the action according to the theory urged on appeal and to know before final decree below what contentions he is to meet. As stated by the Court in that case (p. 498):

> "The taxpayers were entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiency."

In a footnote we give a list of illustrative decisions by this and other courts enforcing this wholesome rule of appellate procedure.*

In *Helvering* v. *Wood*, decided by this Court on February 26, 1940 (No. 384, October Term, 1939), the appellant was not permitted "to add here for the first time another string to his bow"; and the Court pointed out that to permit appellant to do this would both deprive this Court of the assistance of decision below, and also permit a shift to ground which the taxpayer had every reason to believe was abandoned in the earlier stages of the litigation.

So strongly entrenched is this rule that it has been held by this Court that in a case where the Circuit Court of Appeals gave consideration to a new theory on an issue "not pleaded, tried, argued or otherwise referred to" in the proceedings below, even though opposing counsel did not object to consideration by the Circuit Court of Appeals of the new theory, nevertheless, if the new theory be accepted, opportunity should be given to the opposing party to meet the

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* See *Helvering* v. *Minnesota Tea Co.*, 296 U. S. 378, 380;
Burnet v. *Commonwealth Improvement Co.*, 287 U. S. 415, 418, cases involving income taxes;
Texas & Pacific Ry. Co. v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 435, a railroad rate case;
Roura v. *Government of the Philippine Islands*, 218 U. S. 386, 400, involving the registration of land titles;
San Juan Light & Transit Co. v. *Requena*, 224 U. S. 89, 97, involving a negligence action against a utility; and the following miscellaneous decisions:
Peck v. *Heurich*, 167 U. S. 624;
Wright v. *Wright*, 226 N. Y. 578;
Brown v. *Manufacturers Trust Co.*, 278 N. Y. 317;
Canaday Cooler Co., Inc. v. *Staten Island S. Co.*, 234 N. Y. App. Div. 451;
Pasquale v. *Clyde Piece Dye Works, Inc.*, 120 N. J. L. 557;
Palmer v. *Edgerly*, 87 N. H. 391, 181 Atl. 125;
Olsen v. *Shephard*, 165 Minn. 433, 437-438;
Kellner v. *Schmidt*, 328 Ill. 426, 430;
Vilas v. *Seith*, 108 Vt. 18, 183 Atl. 854.

new situation at a new hearing before the trial court (*Helvering* v. *Gowran*, 302 U. S. 238, 245, 247). Such was the practice adopted by the Circuit Court of Appeals for the First Circuit in the case of *Woodward* v. *Boston Lasting Mach. Co.*, 63 Fed. 609, which received the sanction of this Court in the *Gowran* case. But as pointed out above, the Circuit Court of Appeals in the instant case did not accept the new theories proffered by Petitioner, nor did their proffer before the Circuit Court go unchallenged by Respondent.

We, therefore, submit that this Court in its consideration of the correctness of the decision below confine itself to the theory of the case on which it was "pleaded, tried, argued" and decided *in the Insular Court*, and not upon new theories and new contentions presented by Petitioner on appeal in an endeavor to bolster its decision.

Notwithstanding the foregoing, we show below that even were the new points raised by Petitioner available to it at this stage of the litigation they would not result in reversal.

POINT III.

Acts No. 33 and No. 47 of 1935, must be held invalid because they "amend", or "extend", or "confer" provisions of Federal or Puerto Rican laws without complying with Section 34 of the Puerto Rican Organic Act, which provides: "No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be reenacted and published at length."

Constitutional provisions like those of Section 34 are widely recognized as important restrictions upon legisla-

tures. They have been inserted in whole or in part in some thirty-nine state constitutions. In ten states the provisions are almost the same as those quoted above. In other constitutions, particularly those first adopted, the provision refers to revision or amendment without referring to extension or conferring. But the purpose and public policy of all are alike and they are all important.

A list of state constitutions embodying such provisions is presented below, in a footnote.

The purpose of such provisions and the "mischief designed to be remedied" thereby was well stated in 1865 by

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The following five States have constitutional provisions identical or closely similar to that quoted from Section 34 of the Puerto Rican Organic Act: Alabama (Const., §45); Arkansas (Const., Art. V, §23); Colorado (Const., Art. V, §24); Pennsylvania (Const., Art. III, §6); Oklahoma (Const., Art. V, §57). In the following five States the word "revised" appears in place of "revived": Kentucky (Const., §51); Montana (Const., Art. V, §25); three of these, New Mexico (Const., Art. IV, §15), North Dakota (Const., §64), and Wyoming (Const., Art. III, §26), omit the word "conferred". The following twenty States have closely similar provisions, using only the words "revised and amended", "revised, altered and amended", or "revived and amended", as follows: "Revised and amended": Arizona (Const., Art. II, §14); California (Const., Art. IV, §24); Florida (Const., Art. III, §16); Idaho (Const., Art. III, §18); Indiana (Const., Art. IV, §21); Nevada (Const., Art. IV, §17); Oregon (Const., Art. IV, §22); Utah (Const., Art. VI, §23); Washington (Const., Art. II, §37). "Revised, altered and amended": Michigan (Const., Art. V, §21). "Revived and amended": Illinois (Const., Art. IV, §13); Kansas (Const., Art. II, §16); Louisiana (Const., Art. III, §17); Maryland (Const., Art. III, §29); Mississippi (Const., §61); New Jersey (Const., Art. IV, s. VII, §4); Ohio (Const., Art. II, §16); Texas (Const., Art. 3, §36); Virginia (Const., §52); West Virginia (Const., Art. 6, §30). Georgia (Const., Art. III, §VII, Par. 17) has a provision using the words "amended or repealed". Analogous provisions are found in Missouri (Const., Art. IV, §§33, 34); Nebraska (Const., Art. III, §14); Tennessee (Const., Art. II, §17); New York (Const., Art. III, §16). Certain other states, having no such provision, have nevertheless a provision requiring the subject of an act to be expressed in its title closely similar to that in Section 34 of the Puerto Rican Organic Act (Appendix, p. 73): Delaware (Const., Art. II, §16); Minnesota (Const., Art. IV, §27); South Carolina (Const., Art. III, §17); South Dakota (Const., Art. III, §21).

the Michigan court in *People* v. *Mahaney* 13 Mich. 481, as follows; this statement has been widely quoted and approved:

> "The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws. An amendatory act which purported only to insert certain words, or to substitute one phrase for another in an act or section which was only referred to but not republished, was well calculated to mislead the careless as to its effect, and was, perhaps, sometimes drawn in that form for that express purpose. Endless confusion was thus introduced into the law, and the Constitution wisely prohibited such legislation." *People* v. *Mahaney*, 13 Mich. 481.

The important case of *State* v. *Armstrong*, 31 N. Mex. 220, 243 Pac. 333 (1924), the case which most exhaustively and clearly treats such provisions, states the purpose of such provisions as follows at pages 272 and 273:

> "* * * As said in substance in many of the cases, **the purpose of such limitations as this** (as well as of that, common to most of the states, that a statute shall contain but one subject or object, which shall be expressed in its title), **is that statutes shall carry on their face sufficient that, by an inspection, their import may be known. This purpose is everywhere admitted to be salutary. It was to prevent evils broadly referred to as 'blind legislation', manifested in a number of ways.** Amendments were made by merely striking out or inserting a phrase or word

Statutes repealed, and perhaps for that reason omitted from compilations, were revived by reference to title only. **Existing laws or provisions of laws of the same or other jurisdiction were adopted by mere reference. All of these legislative practices frustrated the broad purpose of these constitutional limitations and constituted 'blind legislation'.** In developing the remedy, restriction was first placed upon reviving or amending, or revising or amending by reference to title only. This provision, as correctly construed by the courts, cured only some of the evils of 'blind legislation'. It did not touch 'reference statutes', for such did not amend, revise or revive. The existing law was left to operate just as it did before. Its scope was merely enlarged in one way or another. It requires no argument to demonstrate that courts have no power to restrict legislative practice, even by consulting the mischief intended to be avoided, by declaring an act void when the language of the Constitution does not make it so. **To complete the remedy, the restriction upon extensions was inserted.** * * *

"* * * **The courts are not left to inquire whether the Legislature or the people at large, or the party litigating, have been misled in a particular case. They are given a general rule, the application of which is presumed best to meet all cases.** * * *"
(Emphasis supplied.)

The court also gives the history and development of such constitutional provisions since *People* v. *Mahaney*, 13 Mich. 481, in 1865—at page 258.

Similar statements by the New York courts are relevant for, although not using the word "extend", the New York constitutional provision in effect forbids (Article III, Section 16, formerly Section 17) extending without reenacting.

In *People ex rel. Commissioners* v. *Banks*, 67 N. Y. 568, 575-576, the court said:

> "The evil in view in adopting this provision of the Constitution was the incorporating into acts of the legislature by reference to other statutes, of clauses and provisions of which the legislators might be ignorant, and which affecting public or private interests in a manner and to an extent not disclosed upon the face of the act, a bill might become a law, which would not receive the sanction of the legislature if fully understood."

The wisdom of such provisions was recognized by this court in *Posadas* v. *National City Bank*, 296 U. S. 497, 505-506, where Mr. Justice Sutherland says with regard to a law intended to repeal old Section 25 of the Federal Reserve Act:

> "The amendment is made in well approved form—a form which indeed many of the states compel by constitutional provision—namely by repeating the language of the original section with the additions to which we have heretofore called attention. Unless the contrary plainly appear, the employment of such form of amendment is simply to serve the causes of convenience and certainty. That is to say by carrying the full text forward the task of searching out and bringing together the various fragments which go to make up the completed whole after specific eliminations or additions by amendment is rendered unnecessary and possible doubt as to the precise terms of the law as amended is avoided."

Such constitutional provisions have been widely enforced by the courts, which have invalidated many statutes for disregard of these provisions.

In a footnote[1] we give a partial list of court decisions in which statutes have been so invalidated, including many cases where the invalidation was for "extending" or "conferring". We mention below a few statutes which have been invalidated because they "extend" or "confer" provisions in earlier statutes without reenactment.

An Oklahoma act providing for the enforcement of void or defective tax liens, (which the dissenting opinion thought was "highly remedial", p. 249) was held unconstitutional for a defective title and for attempting "to extend the provisions of law for foreclosure of mortgages * * * to the foreclosure of the lien of the holder of a tax sale certificate" and "to confer" them on holders of tax sale certificates. The invalidated act provided that " 'all the proceedings in such action, so far as applicable * * * shall be the same as now provided by law, for the foreclosure of mortgages * * *.' " *Casner* v. *Meriwether*, 4 Pac. (2d) 19, 152 Okl. 246, 249 (1931).

An act of the general assembly of Arkansas providing that "the law now in force governing in cases where coun-

[1] *Savage* v. *Wallace*, 165 Ala. 572, 575; 51 So. 605, 606; *Opinion of Justices*, 237 Ala. 377, 379; 186 So. 731, 733; *Farris* v. *Wright*, 158 Ark. 519, 520; 250 S. W. 889, 890; *Nelson* v. *Hoffman*, 314 Ill. 616, 619; 145 N. E. 688; *Kelley* v. *St. Louis Smelting Co.*, 307 Ill. 367, 370; 138 N. E. 618, 619; *People* v. *Jarecki*, 363 Ill. 180, 186; 1 N. E. (2nd) 855, 858; *School District No. 45* v. *Board of County Commissioners*, 141 Kans. 108, 110; 40 Pac. (2nd) 334, 335; *Hickman, Mayor* v. *Kimbley*, 161 Ky. 552, 654; 171 S. W. 176; *Commonwealth* v. *Moore*, 187 Ky. 494; 219 S. W. 786; *Holmes* v. *State*, 146 Miss. 351, 359; 111 So. 860, 862; *Northern Pacific Co.* v. *Dunham*, 108 Mont. 338, 341; 90 Pac. (2nd) 506, 508; *Tukey* v. *Douglas Co.*, 129 Neb. 353; 261 N. W. 833, 835; *Commonwealth* v. *Sweeney*, 5 D. & C. (Pa.) 80; *Henderson* v. *City of Galveston*, 102 Tex. 163, 169; 114 S. W. 108, 111; *Copeland* v. *Pirie*, 26 Wash. 481, 482; 67 Pac. 227.

ties are authorized to call in their floating indebtedness shall apply and govern in proceedings had by counties * * *." was held void because it "undertakes * * * to extend the positive provisions of law" and was unconstitutional. *Watkins* v. *Eureka Springs*, 49 Ark. 131, 133, 134, 4 S. W. 384 (1887).

A Colorado statute relating to juvenile delinquency was held unconstitutional in *People* v. *Friederich*, 67 Colo. 69, 70, 74, 185 Pac. 657 (1919), for amending one prior law and extending and conferring the provisions of another. The essential provision of the new statute of 1911 was that: "* * * any law of this state defining delinquency or concerning contributory delinquency shall * * * be held to include all girls under 18" (p. 70). The Court said:

> "The Act shows on its face that it attempts to extend the provisions of Section 586 and Section 589, R. S. 1908, by merely alluding to them as acts 'defining delinquency or concerning contributory delinquency'. It is manifest that no person, by reading the act of 1911 alone, could form any idea of its effect or meaning" (p. 74).

A mechanics lien law of Pennsylvania was held unconstitutional in *Titusville Iron Works* v. *Keystone Oil Co.*, 122 Pa. 627 (1888). The court said:

> "Now, the constitution provides in section 6, of Article III, that 'No law shall be revived, amended, extended, or conferred by a reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length'; while the act of 1887 extends and confers the benefits of the acts of 1836 and 1845 to a large class of claimants, without the re-enactment of a single one of the provisions of the acts so extended, and by a reference to their titles only. It would be

difficult to imagine a plainer violation of the constitutional provision."

An important section of the New York Education Law was held void in *Becker* v. *Eisner*, 277 N. Y. 143 (1938). Section 16 of Article III of the Constitution (formerly Section 17), although not using the word "extend", provides in effect that no existing law shall be extended to a new act "except by inserting it in such act". The Court said:

> "This reference to *'all laws'* and to *all* which hereafter may apply to the board of education, not the higher board, is entirely too vague, and to permit it to pass as proper legislation would in effect nullify the Constitution. Such decisions as *People ex rel. Board of Commissioners of Washington Park* v. *Banks* (67 N. Y. 568); *People ex rel. New York Electric Lines Co.* v. *Squire* (107 N. Y. 593); *Darweger* v. *Staats* (267 N. Y. 290, 308), have explained the purpose of section 17 of article III of the Constitution and the evils and confusion it was sought to prevent. All those evils now crowd forward in this legislative enactment. For this case the petitioner seeks only reference to article 33-A of the Education Law, but the act is not so limited—all laws—what laws? Nobody knows and nobody can tell with any certainty, although we may guess that none will turn up except article 33-A as applicable to the Board of Education. There is the provision "all laws applicable"—too vague to be good. * * * Such language is deceptive and illustrates the danger which flows from legislation by reference" (p. 150).

State ex rel. Gammons v. *Shafer*, 63 N. D. 128, 246 N. W. 874 (1933). This involved the constitutionality of an initiated bill or measure purporting to reduce salaries of Government officials and employees. Neither the title nor

the act referred to any specific statute. The court held the salary section unconstitutional and invalid as contrary to Section 64 of the State Constitution, which is the same as the Puerto Rican provision in Section 34, except that it does not speak of "conferring".

People v. Greer College, 302 Ill. 538, held an act invalid which gave individuals the right to maintain suit to procure the dissolution of the corporate donees of charitable gifts for diversion of the gift, and imposing the severe penalty of forfeiture of property. This was found to be an amendment of the original act, under which such diversion, or change in the purposes of the gifts, was punishable before the enactment of the later statute only by a suit of *Quo Warranto* for forfeiture of the charter or franchise, brought at the instance of the Attorney General.

Pittsburgh's Petition for Board of Viewers, 138 Pa. 401, 429 (1891), held that an amended charter to the city of Pittsburgh was invalid because it attempted "to extend to * * * new officers" created by the act "all the acts * * * relating to the duties of abolished offices".

The court said:

> "These sections do undertake to confer powers, previously exercised by a number of officers whose offices are discontinued, upon the heads of departments created by the act. They undertake to extend to these new officers all the acts of assembly relating to the duties and powers of all these unnamed and abolished offices, without even a reference to their dates, their titles, or their subject matter. **To understand what was, and what was not within their control, it would be necessary to digest all the local laws relating to all the officers whose functions are thus gathered up and dropped into the hands of the 'heads of departments'. This mode of defining the powers of a newly created officer is in violation**

> **of the letter and the spirit of the constitutional provision, and cannot be sustained;** *Titusville Iron W.* v. *Oil Co.,* 122 Pa. 627; *Donohugh* v. *Roberts,* 11 W. N. 186."

Other excellent cases regarding such constitutional provisions, in addition to the above, are the following:

Sovereign v. *State,* 7 Neb. 409 (1878), saying that such blind legislation "if permitted, would introduce endless confusion and uncertainty into the law. To avoid the possibility of such legislation, the people, by this constitutional provision, have taken from the Legislature the power to so amend a statute".

Watkins v. *Eureka Springs;* 49 Ark. 131, 134, 135, 4 S. W. 384 (1886).

In re Buelow, 98 Fed. 86 (D. C. Wash.) (1889).

State v. *Beddo,* 22 Utah 432 (1900), containing an excellent statement of the purpose, character and public policy of such provisions.

Martin v. *Gilliam County,* 89 Ore. 394, 173 Pac. 938 (1918).

DeMotte v. *DeMotte,* 364 Ill. 421 (1936), where the court said, in holding invalid, an amendment without reenactment:

> "* * * The other matters already referred to make the reading of both acts necessary to a determination as to what the law is on the subject of divorce. There is an intermingling of the provisions to the extent condemned and prohibited by the constitution and the amendatory statute does amend the divorce act. * * *"

59 Corpus Juris 863 sums up the situation fairly. After saying that in a large number of states the constitutions provide "that no statute shall be amended by reference to

its title only, but the statute amended or as amended shall be set forth and published at length", and that in New York the constitution declares "that no act shall be passed which shall provide that any existing law or any part thereof shall be made or deemed a part of the act or which shall enact that any existing law or any part thereof shall be applicable, except by inserting it in such act", and that in New Jersey the constitution requires both provisions, *Corpus Juris* says:

> *"These provisions have been uniformly held to be mandatory and unless they are substantially complied with the amendatory act is void and ineffective"*, citing very many cases (Emphasis supplied).

Acts No. 33 and No. 47 clearly "amend" or "extend"—or "confer"—the provisions of the Joint Resolution without reenactment and are therefore void.

The provision inserted by Congress in the present Organic Act for Puerto Rico (Appendix, p. 73) is:

> "No law shall be revived or amended or the provisions thereof extended or conferred by reference to its title only but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length."

What do the words "amend" and "extend" as used in this provision mean?

The meaning of "amend" is comparatively clear, generally speaking, although sometimes it is construed strictly and sometimes broadly.

The word "extend" forms an important part of Section 34 as applied to this case, for even though it may be argued that the loose language of Acts No. 33 and No. 47

does not in any strict sense "amend" the Joint Resolution, it certainly "extends" that Resolution.

One of the definitions in the Century Dictionary is helpful:

> "4. To make more comprehensive; enlarge the scope of; give a wider range to; * * *.

The cases mentioned above at pages 41 to 49, where the courts have invalidated statutes because they "extend" other statutes, help us to define the word, as they show how courts use and apply the word in this connection.

Without attempting to give a complete definition of the word for the purpose of such constitutional provisions, we submit that an older statute is certainly "extended" by a new statute (1) if the new statute enlarges the scope of the older statute or gives it a wider range or enlarges it in any sense; or (2) makes it more comprehensive; or (3) makes it applicable to new persons or situations; or (4) changes the effect or means or method of enforcement. An "extension" may be either (1) by incorporating into the new statute provisions of the old (and thus in effect embodying the old statute or some parts of it in the new statute), or (2) by referring to the older statute (without incorporating it) in such a way as to introduce into the new statute definitions and concepts of the older statute and thus "extending" the older statute by making the new statute carry on the purposes of the older statute.

It is interesting that at page 34 of his brief, Petitioner's counsel states that Acts No. 33 and No. 47 "amounted, in effect, to an adoption by reference of those provisions of the Federal statutes as part of the local statutory law", referring to Section 752 of Title 48, U. S. C. and the second paragraph of Section 39 of the Organic Act of 1917, both of which include Section 3 of the Joint Resolution. Obvi-

ously, if the two Acts named did adopt these Federal provisions, they either "amended" or "extended" the provisions of the Federal statute, without re-enacting "at length", as required by Section 34, "so much thereof as is revived, amended, extended or conferred"—with the result that the two Acts must be so far held invalid.

The rule against "extension" is not limited to prior laws of the same jurisdiction.

The mischief and purpose of this remedial provision are clearer and stronger in case of "extension" of a foreign law than of a law of the same jurisdiction, for the resulting confusion and blindness are greater when a foreign law is "extended".

We find no authority for any such limitation of the rule. On the other hand, in the well-considered case of *State* v. *Armstrong*, 31 N. Mex. 220 (*supra*, pp. 42-43), the New Mexican statute was held invalid because it "extended" the provisions of the Prohibition Amendment and of the National Prohibition Act.

The important case of *Darweger* v. *Staats*, 267 N. Y. 290, 308, *et seq.*, is persuasive on this point. It held invalid as contrary to the New York constitutional provision against extension, a statute which provided that violation of any N. R. A. Code approved by the President and in effect pursuant to Title 1 of the National Industrial Recovery Act (48 U. S. Stats. 195) would constitute the New York standard of fair competition for intrastate transactions and made a violation thereof a misdemeanor. The Court says at page 309:

> "The Codes above referred to, when once approved, are designed to have the effect of the law; they are made law by the act of Congress so far as they affect interstate commerce, and now they are

proposed to be made law by incorporating them bodily into our statute by reference. It is too narrow a construction of this wise constitutional provision to say that it only applies to State laws and not to the Codes, because they are not laws in the strict sense of the word. The Codes became laws with heavy sanctions for an infraction. Their embodiment into chapter 781 of the Laws of 1933 by reference was unconstitutional. (*Opinion of the Justices*, 239 Mass. 606; *State* v. *Vino Medical Co.*, 121 Me. 438.) (See, also, *People ex rel. New York Electric Lines Co.* v. *Squire*, 107 N. Y. 593, p. 602; *Matter of Watkinson* v. *Hotel Pennsylvania*, 195 App. Div. 624, affd., 231 N. Y. 562.)"

Section 3 of the Joint Resolution of May 1, 1900 is certainly "extended" by Acts No. 33 and No. 47, without reenactment.

The relative part of the Joint Resolution is that: "every corporation hereafter authorized to engage in agriculture shall, by its charter, be restricted to the ownership and control of not to exceed 500 acres of land."

Act No. 33 says:

"Section 1. There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all quo warranto proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding in the nature of quo warranto."

It is clear that Act No. 33 "extended" the Joint Resolution. For until that Act was passed a corporation authorized to engage in agriculture and holding more than 500

acres of land was not subject to any *Quo Warranto* proceeding in any court for "violation" of the Joint Resolution as it was and is worded. Act No. 33 (if valid) provided that the violation of Section 752, including the 500 acre provision, "shall constitute sufficient cause to institute a proceeding in the nature of *Quo Warranto* before the Supreme Court" and, thus, attempted to provide that a suit could be brought in the Supreme Court under the *Quo Warranto* Law against a corporation violating the 500 acre provision of Section 752, which might possibly result in ouster and fine. Assuming that this was the intended effect of Act No. 33, that Act would make the offending corporation subject to a suit and penalties for "violation" of the 500 acre provision to which it was previously not subject and on an interpretation of the Joint Resolution (as being a prohibition on corporations instead of a mandate on Puerto Rico as before) which the words of the Resolution did not justify. Act No. 33 was thus either an amendment of a Federal law (which was obviously impossible) or an "extension" thereof as enlarging its scope and applicability and effect. Act No. 33 also "conferred" jurisdiction upon the Supreme Court.

Act No. 33 thus "extended" the Joint Resolution and "conferred" jurisdiction, without re-enacting the provisions extended or conferred, as required by Section 34 of the Organic Act, and it was consequently invalid.

Act No. 47 even more dramatically "extends" the Organic Act of Puerto Rico, or the Joint Resolution. For before the passage of Act No. 47, the offending agricultural corporation could, at most, under the Joint Resolution as "extended" by Act No. 33 (if the extension could be held valid) be subjected to a *Quo Warranto* suit in which ouster and fine could be ordered at the discretion of the Supreme

Court. But by Act No. 47 (if valid) the Organic Act, including the Joint Resolution, was further "amended" or "extended" so that if the offending corporation (by itself or through any other subsidiary or affiliated entity or agent) "exercises rights, performs acts or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico," including the Joint Resolution, it would face new and terrible penalties. For if "in the opinion of the (Supreme) Court it is satisfactorily established" that its excess land holding was "in violation of the express provisions of the Organic Act of Puerto Rico", the Supreme Court would be bound by the **mandatory** provision of Act No. 47 to decree its dissolution and to "decree the cancellation of every entry or registration made by said corporation in the public registries of Puerto Rico"! The Organic Act (or at least the Joint Resolution) was thus extended by Act No. 47 without reenactment of any of the provisions extended, contrary to the prohibition of Section 34. For in order to determine whether its offending was "in violation of the express provisions of the Organic Act of Puerto Rico", the Organic Act (or at least the Joint Resolution) must be read, and read with Act No. 47, for not only the jurisdiction of the Supreme Court, but also the penalties to be imposed, depend upon a determination by the Supreme Court as to whether the express provisions of the Organic Act were actually violated by the offending corporation.

But this is not all.

For opposing counsel argued for the **first time** in the Court below (after the case was argued, tried and decided in Puerto Rico on the theory, apparently approved by all parties, that the only basis for the jurisdiction of the Supreme Court was violation of the Federal Act, and without mention of Puerto Rican statutes), and now argues,

that in Act No. 47 the words "or of any of its statutes" mean "or of any of the statutes of Puerto Rico" and that consequently the Supreme Court has, under Act No. 47, "exclusive original jurisdiction", and power to enforce these severe penalties, either for "violation of the express provisions of the Organic Act of Puerto Rico" or for violation of the express provisions "of any of the statutes of Puerto Rico."

What Puerto Rican statutes did the Legislature mean? No one can tell.

If it should be held that the meaning of the words is "or of any of the statutes of Puerto Rico" Act No. 47 clearly "amends" or "extends" the provisions of many existing Puerto Rican statutes without reenacting the provisions "amended" or "extended" as required by Section 34 of the Organic Act and for that reason Act No. 47 must be held void.

A partial list of Puerto Rican statutes so "amended" or "extended" is set forth below.* And at the risk of being tedious, we may illustrate this effect of Act No. 47 by a few examples referring to different statutes.

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* "An Act to Regulate the Operation of Motor Vehicles in Porto Rico, and for other purposes", Act No. 75, Laws of 1916, pp. 140-150; Sec. 13, and (as Amended by Act No. 93, Laws of 1925, pp. 756-762) Secs. 9 and 18; "An Act to Regulate the employment of Minors . . . ", Act No. 75, Laws of 1921, pp. 678-700, Sec. 2, and (as amended by Act No. 64, Laws of 1925, pp. 338-342) Sec. 3, and (as amended by Act No. 75, Laws of 1931, pp. 462-466) Sec. 19; Penal Code of Porto Rico, Chap. X, Sec. 483; Civil Code of Porto Rico, 1930 Ed., pp. 343-345, Secs. 1649, 1652; "An Act to establish a law of private corporations", Act No. 30, Laws of 1911, pp. 87-115, as amended by Act No. 48, Laws of 1934, pp. 384-388, Secs. 5(a) and 5(b); "An Act to prohibit the payment of laborers' wages in anything other than lawful money . . ." Act of March 12, 1908, Laws of 1908, pp. 171, 172, Sec. 2, and (as amended by Act No. 61, Laws of 1931, pp. 408-410) Sec. 1; "An Act to regulate labor contracts; . . ." Act No. 17, Laws of 1931, pp. 194-196, Secs. 1 and 2.

Let us take the case of a Puerto Rican statute that would be "extended" by Act No. 47—Section 1649 of the Puerto Rican Civil Code (Appendix, p. 79) establishing 12% as the maximum interest rate in Puerto Rico. Assume that Corporation A is a loan company or perhaps a sugar central corporation which, upon a loan, contracts for and receives greater interest. **Until August 7, 1935**, when Act No. 47 was approved, Corporation A would know that under Sections 1652 and 1653 of the Civil Code (Appendix, p. 79) the usurious contract would be void and unenforceable and that the debtor could recover back the excess paid above the legal interest. But **after** August 7, 1935, Corporation A would also be subject to a proceeding under Act No. 47 instituted by the Attorney General before the Supreme Court for exercising rights, performing acts or making contracts "in violation of the express provisions" of the usury sections, being one of the statutes of Puerto Rico vaguely referred to by Act No. 47; and the Corporation would, in that proceeding, face terrible penalties. For if the Supreme Court should consider that the usurious transaction, being a violation of the express provisions of a statute of Puerto Rico, was "satisfactorily established", it would be **compelled** by Act No. 47 to decree the dissolution of the Corporation and also "decree the cancellation of every entry or registration" made by it in the public registries of Puerto Rico—thus in effect depriving the corporation of all its real property! But worse than that, under the Spanish version of Act No. 47, which controls the English version, and is badly mistranslated by the English version, the Court would also be compelled to decree "the nullity of all acts done and contracts realized (realizados) by the defendant corporation or entity"—however much time may have elapsed and however third parties may be affected and however the whole organiza-

tion of the corporation and the rights of stockholders and creditors may be upset (see translation, pp. 25, 26, *supra*).

This is shocking. But if Act No. 47 is valid and means what opposing counsel says, it certainly adds to the usury provisions of the Civil Code new and very severe penalties and compels the Supreme Court to examine those provisions in order to decide whether they are violated and in order to impose those penalties. Those Code provisions are thus extended to, and in some sense made a part of, the *Quo Warranto* Act by the words of Act No. 47.

Another important Puerto Rican statute that would be "extended" by Act No. 47 is Section 5(*b*) which by Act No. 48 of 1934 (p. 384) (Appendix, p. 81) was added to "The Law of Private Corporations", being Law No. 30 of March 9, 1911. This Section provides in great detail what books and records corporations must keep in Puerto Rico covering transactions with affiliated corporations and entities and the capital invested in Puerto Rico by such affiliated corporations, and it further provides that the failure to keep such books and records "shall constitute sufficient cause for the dissolution of a domestic corporation through a petition of *quo warranto* filed by, and in the name of, the Attorney General of Puerto Rico * * * *provided* that when the petition is made by the Treasurer or by any taxpayer, the Attorney General shall be bound to file the complaint in a District Court of competent jurisdiction."

Let us suppose that Corporation B, in the face of this rather formidable "express provision" of a Puerto Rican statute, fails to keep the required books and records in Puerto Rico. Until August 7, 1935, the only result of such failure would be a suit brought by the Attorney General in the District Court of Puerto Rico in which that court might dissolve the corporation and, probably, under the Quo Warranto Act of 1902, as amended, impose a fine.

But after August 7, 1935, Corporation B would, for that same failure to keep books and records, face a suit not in the District Court but only in the Supreme Court for violation of these "express provisions" and if its failure in any particular should be "satisfactorily established", the Supreme Court would be bound to enter judgment dissolving the corporation and imposing the heavy penalties above mentioned. Thus Act No. 47 "amended" or "extended" the provisions of Section 5(*b*) of the Law of Private Corporations by providing that the suit must be brought in the Supreme Court instead of the District Court, by omitting the provisions for a petition "by the Treasurer or by any taxpayer", by making the dissolution of the guilty corporation mandatory and by adding the startling penalties above mentioned; and Act No. 47 also conferred a new jurisdiction upon the Supreme Court—and all without re-enacting any of the provisions of Section 5(*b*).

So we have these two Acts "amending" or "extending" or "conferring" without re-enactment the provisions of the Joint Resolution, and also of many Puerto Rican statutes (if, as contended by opposing counsel the words "or of any of its statutes" mean Puerto Rican statutes)—in clear contravention of the words and spirit of the wise provisions of Section 34; and they must be held void. No better example could be imagined of the mischief which such constitutional provisions are intended to prevent—the blind and misleading legislation, which results from "amendment", "extension" or "conferring" by reference without re-enactment.

Opposing counsel may say that the words "or of any of its statutes", are intended to refer only to applicable statutes of Puerto Rico. But who shall say what are applicable? Is it good legislation, or improper legislation

to provide that violation by a corporation of the express provisions "of any of its statutes" shall subject the corporation to dissolution (by mandatory provision) and to the "cancellation of every entry or registration made" in the public registries and to the nullification of its acts and contracts? And to say that the Court may decide that certain Puerto Rican statutes are not applicable and may be ignored does not remedy the evil but creates an additional evil of uncertainty?

Moreover, even if only one Puerto Rican statute is held applicable and hence held to be "amended" or "extended", the violation of Section 34 and the invalidity of Act No. 47 are just as clear as if the full list of statutes was held to be applicable and hence "amended" or "extended".

POINT IV.

If it were open to Petitioner to urge that Acts No. 33 and No. 47 "amounted in effect to an adoption by reference of those provisions of the federal statutes as parts of the local Statutory Law" (Petitioner's Brief, p. 34), the contention could not aid its case.

Obviously incorporation or adoption by reference imports something more than mere reference. The reference must be of such character that the intention is manifest to incorporate or adopt.

Bouvier's Law Dictionary (Baldwin's Century Edition):

> "INCORPORATION BY REFERENCE. The bringing into one document in legal effect, of the contents of another by referring to the latter in such manner as to adopt it."

How such intent is to be manifested, whether by apt words in the document itself or by surrounding circumstances, must vary with the case and with the purpose to be accomplished by the adoption. It is sufficient here to indicate that the purpose of Petitioner's contention cannot be accomplished in the suggested manner, for such purpose is merely to brush away as unimportant the entire body of law affecting insular or state enforcement of federal penal statutes, the entire body of law dealing with statutes which "amend or extend" other statutes and to simplify to the point of absurdity the problem presented in this litigation. It is truly a *reductio ad absurdum.*

Our comment is pointed by noting that in his brief in support of the application for certiorari (p. 9), the Solicitor General stated that this Court in the *Shell* case "was clearly of the opinion, however, that the Puerto Rican courts could not enforce the Sherman Anti-Trust Act but only its local equivalent". The same admission, though not so clearly set forth, permeates the entire argument contained in the brief of Petitioner; (while in his brief now before this Court, the Solicitor General has somewhat shifted his position and seeks to distinguish what he now calls the "dictum" of the *Shell* case from the instant case on the ground that the Sherman Anti-Trust Act is a statute of different character from the federal statute here involved.) Counsel for Petitioner therefore seeks for a "local equivalent" under which to justify the enactment of Act No. 47. He contends that Act No. 30 of the Laws of 1911 is such an equivalent, but not being certain that this Court will accept the views of Judge Peters in that respect, he seeks to find another "local equivalent" by arguing that Act No. 47, by mere reference to the Organic Act, thereby incorporates in Act No. 47 the Organic Act and thus, "pulling himself over the

fence by his own boot straps", he finds his "local equivalent"!

We may add a closely applicable comment upon "the old and well-worn short-cut route" in *Titusville Iron Works v. Keystone Oil Co.*, 122 Pa., at page 633, where the court says:

> "But the constitution of 1874, section 6, of article III, already referred to, requires all statutes to be self-explanatory and complete in their provisions, and forbids the extension, amendment, revival, or the use of any other method of conferring the benefits of previous legislation short of re-enactment at length. This effectually closes the old and well-worn short-cut route, and we cannot, no matter how much inclined we might be to do so, give effect, even as to future cases, to expository acts like that under consideration. They are void as an unauthorized exercise of judicial power, and they are void because of the infraction of section 6, of article III."

The Acts in question do not justify the argument for such incorporation; the necessary intent is lacking.

Act No. 33 purports to give the Supreme Court cognizance of *Quo Warranto* proceedings instituted "for violation of the provisions" of Section 752, Title 48, United States Code, and provides that such "violation" shall constitute a sufficient cause to institute a proceeding in the nature of *Quo Warranto*. Section 752 is a long section, including various provisions, of which one can be violated by individuals and one (regarding disposition of real estate within five years), can be violated by corporations; all the others, according to their wording, are merely mandates to the Legislature of Puerto Rico.

Act No. 47 purports to give the Supreme Court jurisdiction for violation by a corporation "of the express provisions of the Organic Act of Puerto Rico or of any of its

statutes". The Organic Act will be found printed in Spanish and English at the beginning of each volume of "Laws of Puerto Rico" for any regular session of the Legislature. It covers fifty-eight sections and sixty-eight pages, thirty-four for the Spanish version and thirty-four for the English.

Can the words of these Acts, or either of them, indicate any intent to make this long Section 752 or the Organic Act, or any specific part of those federal statutes, a part of the statutory law of Puerto Rico in such sense as to give foundation for the "short-cut" argument of the Petitioner? We think not.

POINT V.

The special limited jurisdiction of the Supreme Court cannot be sustained on the ground that the respondent has "violated" the provisions of its articles of incorporation.

If, by the words "or of any of its statutes", Act No. 47 means Puerto Rican statutes, that Act is invalid as "amending" or "extending" various Puerto Rican statutes without reenactment, contrary to Section 34 of the Organic Act, as we show in Point III above.

Whether or not the Act refers to Puerto Rican statutes, it is clear that neither Act No. 33 nor Act No. 47 gives jurisdiction for the violation of articles of incorporation.

The jurisdiction of the Supreme Court can be found nowhere but in one or the other of these two Acts and their wording shows that no jurisdiction is given for violation of articles of incorporation.

Act No. 33 purports to give the Supreme Court jurisdiction for "violations of the provisions" of Section 752—not for violation of charter restrictions. Act No. 47 pur-

ports to give the Supreme Court power to entertain *Quo Warrayto* proceedings for "violation of the express provisions of the Organic Act of Puerto Rico * * *"—not for violations of charter provisions.

Even though the "provisions" of Section 752 or of the Organic Act should be found in articles of incorporation, the Acts in question give no jurisdiction to the Supreme Court.

A corporate charter is not a statute and violation of its provisions is not a violation of a statute although the act or omission which violates the charter may also violate one or more statutes.

In the grant of jurisdiction to the Supreme Court, the legislature apparently makes a distinction between "*ultra vires*" acts and "illegal" acts. Of the first class of acts jurisdiction remains in the district courts; of the latter class jurisdiction is vested in the Supreme Court.

Such a distinction is clear and rests upon a sound legal basis which the following excerpts will serve to illustrate.

> "Ultra vires and illegality represent totally different ideas. Bissell *v.* R. R., 22 N. Y. 269. Ultra vires contracts are, strictly speaking, only those which are defective solely because they are beyond the power of the corporation when they involve some adventure or undertaking not within the scope of the charter, which is the rule of its corporate action. * * *
>
> If the contract is illegal, as in violation of established principles of public policy, it can not, of course, be enforced."
>
> *Maryland Trust Co.* v. *Nat'l Mechanics Bank*, 102 Md. 608, 614; 63 Atl. 70, 72.

> "The phrase 'ultra vires' unfortunately has been used to designate, not only acts beyond the express and implied powers of the corporation, but also acts

which are contrary to public policy or contrary to some statute expressly prohibiting them. The latter class of acts are now termed 'illegal,' and the term 'ultra vires' is confined to the former class. 'Ultra vires contracts are contracts which are beyond the statutory powers of the corporation, and not contracts expressly prohibited by statute and contrary to the public policy of the Legislature'. Cook on Corporations (7th Ed.), Vol. 3, p. 2161, note."

In re Grand Union Co. (C. C. A., 2nd Circuit), 219 Fed. 353, 363.

There appears to be no end to the ingenuity of counsel in suggesting arguments for the validation of this legislation. As a last resort the Solicitor General seems to argue that when in Act No. 33 the *provisions* of Section 752 of Title 48 are mentioned and when in Act No. 47 the *express provisions* of the Organic Act are mentioned, the Legislature of Puerto Rico thereby intended to say, the provisions of any local corporation act or of any articles of incorporation which embodied the same or similar provisions or provisions somewhat resembling those of the statutes referred to. This is indeed ingenuity carried to the point of casuistry.

POINT VI.

In any event the allegations of the amended information do not embrace a charge of violation of a statute of Puerto Rico.

Territory of New Mexico v. *Ortiz*, 1 N. M. 5;
Westbrook v. *Wicks*, 36 Iowa 382;
Maxwell v. *Burton*, 2 Utah 595;
State v. *Nashville Baseball Club*, 127 Tenn. 292, 309-311, Ann. Cas. 1914 B. 1243;

People v. *Manhattan Real Estate & Loan Co.*, 175 N. Y. 433.

In the last cited case the court states (p. 135):

> "When the action is based upon an alleged violation of law the complaint should distinctly state what law or what provision of the corporate charter has been violated."

POINT VII.

Petitioner's contention (Brief, 42, 43) that the purported grant of jurisdiction in Act No. 47 in cases of violation "of any of its statutes" is separable from the grant of jurisdiction covering violations of the Organic Act, and thus could be separately sustained, is untenable.

We submit that the cases cited by Petitioner (and relied on by Judge Peters in his dissent) do not bear out its contention, and that such contention is negatived by the rulings of this Court in:

Williams v. *Standard Oil Co.*, 278 U. S. 235, 241;
Yu Cong Eng v. *Trinidad*, 271 U. S. 500;
Carter v. *Carter Coal Co.*, 298 U. S. 238, 312.

Act No. 47 contains no provision that if any part of the Act is held invalid the remainder of the Act shall not be affected thereby.

This Court has repeatedly held that in the absence of such a provision the presumption arises that the legislature intends an Act to be effective as an entirety.

In *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 312, the case last above cited, the Court said:

"In the absence of such a provision, the presumption is that the legislature intends an act to be effective as an entirety—that is to say, the rule is against the mutilation of a statute; and if any provision be unconstitutional, the presumption is that the remaining provisions fall with it. The effect of the statute is to reverse this presumption in favor of inseparability and create the opposite one of separability. Under the non-statutory rule, the burden is upon the supporter of the legislation to show the separability of the provisions involved. Under the statutory rule, the burden is shifted to the assailant to show their inseparability. But under either rule, the determination, in the end, is reached by applying the same test—namely, What was the intent of the lawmakers?"

A somewhat fuller statement of the rule is found in *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 241.

No showing has been made by the Petitioner to demonstrate the separability of these provisions.

On the other hand, an examination of Acts Nos. 33, 44, 47 and 48, all of which were passed at the same special session of 1935, and forming, as related legislation, parts of a general plan, will convincingly demonstrate that the legislature would not have passed the provisions of Act No. 47 upon which Petitioner now rests without the provisions vesting jurisdiction in the Supreme Court on the ground of violations of provisions of the Joint Resolution and the Organic Act and without the penalties established in the same Act.

In Conclusion.

In the last analysis although many questions are presented and must be decided, the case presents a single problem, namely: Whether two Puerto Rican statutes, Nos. 33 and 47 of the Special Session of 1935, which we contend are clearly invalid as repugnant to the provisions of the Organic Act of Puerto Rico and in excess of the powers of the Insular Legislature, are to be sustained by this Court, notwithstanding that there is now and has been for many years prior to the enactment of Acts Nos. 33 and 47 ample statutory provision in Puerto Rico whereby the People can challenge the right of a corporation to exercise its corporate franchise. We do not and could not contend that the Puerto Rican District Courts are without jurisdiction to entertain *Quo Warranto* proceedings against a corporation to determine whether it is engaged in unlawful or *ultra vires* activity under local law or its corporate charter. The question here is not whether the Insular Courts have or could be given such power. The question is whether Acts Nos. 33 and 47 shall be sustained for the sole reason that they provide for *Quo Warranto* proceedings and that it suits the purposes of Petitioner to seek the imposition of the penalties provided in them.

Counsel for Petitioner and Solicitor General have made much of public policy and they have talked extensively of the public policy of Puerto Rico. There is no public policy which requires that the clear unambiguous expression of the will of Congress in a field in which it properly is legislating should be disregarded or violated. Section 34 of the Jones Act is neither unusual nor does it lack traditional precedent. As we have shown, "amend and extend" provisions are found in many state constitutions.

There is paramount public policy in requiring all branches of the Insular Government, to comply with the letter and spirit of the Organic Act of 1917, and there is likewise paramount public policy in permitting no branch of the Insular Government to usurp the functions of Congress in a field which belongs to Congress. When Congress in Section 39 of the Jones Act required the Governor of Puerto Rico to report regarding holdings by corporations, partnerships and individuals in excess of 500 acres it exhibited its interest in the situation. Presumably that report was filed and Congress was not moved to take action on the basis thereof. Similarly, when in April 1935, several months before the passage of Acts No. 33 and No. 47, the Puerto Rico Legislature requested Congress to authorize the levying of progressive taxes on estates of 500 acres owned by or acquired for the benefit of corporations, and additional taxes on real property owned or worked for the benefit of persons non-resident of Puerto Rico and to pass "such measures as contained in the present resolution as well as of any other legislation making more effective the enforcement thereof" (R. 261) and when Congress failed to take action on this resolution, Congress was acting negatively upon the proposition that it implement the Joint Resolution. There is a high public policy in not taking the matter out of Congress' hands because of impatience at Congressional inaction or because of a desire on the part of Petitioner to break up land-holdings at the present time (*Helvering* v. *Wood*, *supra*). And there is certainly a wide public policy involved in requiring any action that may be taken to be in compliance with existing valid remedial legislation.

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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February, 1940.

Appendix.

Statutory Provisions.

Federal Statutes:

Sec. 3 of the Joint Resolution No. 23 of the Fifty-sixth Congress, Sess. I, approved May 1, 1900, 31 Stat. 715, 716, provides:

"SEC. 3. That all franchises, privileges or concessions granted under section thirty-two of said Act shall provide that the same shall be subject to amendment, alteration, or repeal; shall forbid the issue of stock or bonds, except in exchange for actual cash, or property at a fair valuation, equal in amount to the par value of the stock or bonds issued; shall forbid the declaring of stock or bond dividends; and, in the case of public-service corporations, shall provide for the effective regulation of the charges thereof and for the purchase or taking by the public authorities of their property at a fair and reasonable valuation. No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in

Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable."

The former Organic Act for Puerto Rico, of April 12, 1900, c. 191, 31 Stat. 77 *et seq.*, provided, in relevant parts:

"SEC. 8. That the laws and ordinances of Porto Rico now in force shall continue in full force and effect, except as altered, amended, or modified hereinafter, or as altered or modified by military orders and decrees in force when this Act shall take effect, and so far as the same are not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable, or the provisions hereof, until altered, amended, or repealed by the legislative authority hereinafter provided for Porto Rico or by Act of Congress of the United States: * * *.

The present Organic Act for Puerto Rico, of March 2, 1917, c. 145, 39 Stat. 951 *et seq.*, provides, in relevant parts:

"SEC. 2. That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

* * * * * * *

That no law impairing the obligation of contracts shall be enacted.

* * * * * * *

That no ex post facto law or bill of attainder shall be enacted.

Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law.

* * * * * * *

"SEC. 9. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have

the same force and effect in Porto Rico as in the United States, except the internal-revenue laws: * * *

* * * * * * *

"SEC. 34. That * * *

No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length.

* * * * * * *

"SEC. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character now in force in Porto Rico or municipality or district thereof in so far as such alteration, amendment, modification, or repeal may be consistent with the provisions of this Act.

* * * * * * *

"SEC. 39. That all grants of franchises and privileges under the section last preceding shall provide that the same shall be subject to amendment, alteration, or repeal, and shall forbid the issue of stocks or bonds except in exchange for actual cash or property at a fair valuation to be determined by the public-service commission equal in amount to the par value of the stocks or bonds issued, and shall forbid the declaring of stock or bond dividends, and in the case of public-service corporations shall provide for

the effective regulation of charges thereof and for the purchase or taking of their property by the authorities at a fair and reasonable valuation.

That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling, or holding of real estate. That the Governor of Porto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres.

"SEC. 40. That the judicial power shall be vested in the courts and tribunals of Porto Rico now established and in operation under and by virtue of existing laws. The jurisdiction of said courts and the form of procedure in them, and the various officers and attachés thereof, shall also continue to be as now provided until otherwise provided by law: *Provided, however*, That the chief justice and associate justices of the supreme court shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and the Legislature of Porto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Porto Rico.

"SEC. 41. That Porto Rico shall constitute a judicial district to be called 'the district of Porto Rico.' The President, by and with the advice and consent of the Senate, shall appoint one district judge, * * *. The district court for said district shall be called 'the District Court of the United

States for Porto Rico,' and shall have power to appoint all necessary officials and assistants * * *. Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States, and shall proceed in the same manner. * * *

"SEC. 42. That the laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters or proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the district court of the United States and the courts of Porto Rico. * * *

* * * * * * *

[*Memo.*—Amendments of this Act do not affect the parts above quoted.]

Title 48, U. S. C., c. 4, **Section 752**, provides:

"§752. SPECIAL PROVISIONS IN FRANCHISES; CORPORATE REAL-ESTATE HOLDINGS. All grants of franchises and privileges under section 750 of this title shall provide that the same shall be subject to amendment, alteration, or repeal, and shall forbid the issue of stocks or bonds except in exchange for actual cash or property at a fair valuation to be determined by the public-service commission equal in amount to the par value of the stocks or bonds issued, and shall forbid the declaring of stock or bond dividends, and in the case of public-service corporations shall provide for the effective regulation of charges thereof and for the purchase or taking of their property by the authorities at a fair and reasonable valuation.

No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership

and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Puerto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable. (May 1, 1900, No. 23, §8, 31 Stat. 716; Mar. 2, 1917, c. 145, §39, 39 Stat. 964; May 17, 1932, c. 190, 47 Stat. 158.)"

General Orders No. 118, as promulgated by Brigadier-General Davis, U. S. Volunteers, Military Governor of Puerto Rico, August 16, 1899 (H. R. Document No. 1484, 60th Congress, 2d Session, Part 4, pp. 2246-2256), provided, in relevant parts:

"General Orders, Hdqrs. Department of Porto Rico,
No. 118. San Juan, August 16, 1899.

Upon the recommendation of the judicial board, the following reorganization and functions of the judiciary of this island were approved on August 10, 1899, and are published for the information and guidance of all concerned:

1. The organization and functions of the courts of justice of this island will, from the 10th inst., undergo reforms in accordance with the following dispositions:

2. There shall be a supreme court of justice with fixed residence in the city of San Juan, composed of a chief justice and four associate justices, who jointly will constitute a judicial bench for all civil and criminal business; the court shall also have a prosecuting attorney, one secretary, two court clerks,

one file clerk and taxer of costs, six clerks, one janitor, and two bailiffs.

* * * * * *

9. Justice in civil and criminal matters will be administered in each district by a court established in its respective capitol. These courts will have exclusive jurisdiction and public oral trial of all classes of civil and criminal matters under the forms and procedure established further on in this general order.

* * * * * *

10. Each district court will be composed of three judges, one of whom shall be presiding judge, and who jointly shall constitute a bench for civil and criminal business. To each district court there shall be attached a prosecuting attorney, who will represent the law in criminal cases and in civil cases when in order.

* * * * * *

12. * * *

The supreme court of justice is hereby abolished. It shall hand over all matters pending before it to the supreme court established by the foregoing provisions.

* * * * * *

14. Business in progress before courts of instruction and first instance courts shall be turned over with due formalities to the district courts corresponding to each respective judicial district.

* * * * * *

47. All civil litigations between parties when the amount exceeds $400 U. S. currency, shall be originally heard and decided before the respective district court in the form established by the following articles.

* * * * * *

78. Appeal to the supreme court will lie in all civil suits for infraction of law and error in pro-

cedure in the cases which the law of civil procedure defines for the latter, but not for suits heard before municipal courts.

* * * * * * *

87. All provisons of the laws of civil and criminal procedure relative to the substantiation of appeals which are in opposition to the provisions of this order are repealed."

* * * * * * *

[Memo.—General Orders, No. 195, as promulgated by Brigadier-General Davis, U. S. Volunteers, Military Governor of Puerto Rico, November 29, 1899, are not here set forth because they relate only to police courts and their jurisdiction.]

Puerto Rican Statutes:

"**An Act Establishing the Supreme Court of Porto Rico as a Court of Appeals**", approved March 12, 1903, Laws of 1903, p. 59, (Section 1 of said Act appears in Comp. of Rev. Stats. and Codes of 1911, Par. 1141, p. 241, and Code of Civil Procedure of Puerto Rico, 1933 Ed., Appendix p. 293), provides, in relevant parts:

"SECTION 1.—That the Supreme Court of Porto Rico shall hereafter be a Court of Appeals and not a Court of Cassation. * * *

* * * * * * *

SECTION 4.—In all cases where reference is made in the Law of Civil Procedure to actions on cassation, the same shall be construed as meaning actions on appeals."

* * * * * * *

Sections 13, 1649 and 1652 of the Civil Code of Porto Rico, 1930 Ed. (pps. 343-345), read:

"SECTION 13.—(Section 1, Act No. 8 of 1917—2. p. 210.) That in case of discrepancy between the English and Spanish texts of a statute passed by the

Legislative Assembly of Porto Rico, the text in which the same originated in either house, shall prevail in the construction of said statute, except in the following cases: (a) If the statute is a translation or adaptation of a statute of the United States or of any State or Territory thereof, the English text shall be given preference over the Spanish. (b) If the statute is of Spanish origin, the Spanish text shall be preferred to the English. (c) If the matter of preference cannot be decided under the foregoing rules, the Spanish text shall prevail."

"SECTION 1649.—*(Section 1, act of March 1, 1902, as amended by act of March 12, 1903, page 109, Comp. of 1911, No. 4172.)* In the absence of an agreement in writing entered into and executed at the time, the rate of interest upon the loan or forbearance of money or goods, or upon any variety of obligation or contract or upon unpaid judgments, shall be at the rate of six dollars annually on each one hundred dollars or upon its equivalent in value and at the same rate for a greater or less sum or for a longer or shorter period. *Provided, however,* That no rate of interest shall be fixed by special agreement in excess of twelve dollars a year on each one hundred dollars or upon its equivalent of value. Within the limit here defined it shall be lawful to discount bills and notes and other similar obligations.

SECTION 1652.—*(Section 4, act of March 1, 1902, as amended by act of March 14, 1907, Comp. of 1911, No. 4175, and sections 3 and 4 of act No. 47, of April 13, 1916, p. 100.)* No person, except as authorized by the preceding section, shall demand or receive, directly or indirectly, any money or goods, at any greater rate of interest for the loan or extension of time of said loan, than the rate provided for herein. Nothing in this chapter shall be taken to prohibit the sale of goods for cash at a less price than for credit.

No contract wherein or whereby there is reserved, accepted or secured, or agreed to be reserved, accepted or secured, any greater rate of interest than as allowed by this chapter, may be made effective in any court in Porto Rico. * * *

Code of Civil Procedure of Puerto Rico (Edition of 1933), p. 41, reads in relevant parts:

"SECTION 104.—(427 Cal.) (*As amended by Act No. 4, March 30, 1933.*)—The plaintiff may join several actions in one complaint, * * *"

"9. The action so joined must all belong to one only of these classes; must affect all the parties to the action; shall not require different places of trial, and shall be separately stated; but an action for malicious arrest and prosecution, or for either of them, may be joined with an action for either an injury to character or to the person; *Provided*, That if actions joined in one complaint are not stated separately, exception may be taken to the complaint on the ground set forth under number 7 of section 105."

"SECTION 105.—(430 Cal.) The defendant may demure to the complaint within the time required in the summons to answer, when it appears on the face thereof, either: * * *

"7. That the complaint is ambiguous, unintelligible, or uncertain."

Act No. 30, entitled "**An Act to Establish a Law of Private Corporations**", approved March 9, 1911, Laws of 1911, pp. 87-115, Comp. of Rev. Stats. and Codes of Porto Rico, 1911, pp. 89-107, (subsequent amendments do not affect parts quoted below), reads, in relevant parts:

"Article I.

ORGANIZATION OF CORPORATIONS AND REVOCATION OF INCORPORATION.

* * * * * * *

SECTION 3.—Every corporation has power:

* * * * * * *

4. To acquire and to hold in any legal manner and to transfer such property, both real and personal as the purposes expressed in the articles of incorporation may require; and to mortgage such property with its franchises: *Provided, however,* That the power of any agricultural corporation organized under this Act to hold real estate shall be subject to the prohibition contained in Section 3 of the Joint Resolution of the Congress of the United States, of May 1, 1900.

SECTION 4.—No corporation formed under this Act shall be deemed to possess or shall exercise corporate powers except in accordance with the provisions of the preceding section. Neither shall any such corporation transact any banking business in conflict with or opposition to the prescriptions of the Statutes of the United States concerning banks.

Section 5 (*b*) of said Act No. 30, inserted therein by amendment by Act No. 48, approved May 13, 1934, Laws of 1934 (pp. 384-388), reads:

"'SECTION 5(*b*).—Every corporation organized under this Act, chapter, or title, before it receives its certificate of incorporation, or before it can enjoy the privilege of continuing to do business in Puerto Rico, in an incorporated form, must keep in Puerto Rico not only its adequate account books exactly reflecting the funds and property invested in the business conducted by such corporation, the receipts and revenues derived from such business, the capital in-

vested, and its operations within and without Puerto Rico, but also a full detail of all transactions carried out between the affiliated companies, whether corporations, limited partnerships, or trust companies, in sufficient detail to show the actual receipts, not only of said domestic corporation, but also of all its affiliates, in the transactions carried out within the Island of Puerto Rico, and also as to the capital directly or indirectly invested in Puerto Rico by said affiliated corporations. The failure to keep such books and records shall constitute sufficient cause for the dissolution of a domestic corporation through a petition of *quo warranto* filed by and in the name of the Attorney General of Puerto Rico, whether on his own initiative or at the instance of the Treasurer of Puerto Rico or of any taxpayer; *Provided*, That when the petition is made by the Treasurer or by any taxpayer, the Attorney General shall be bound to file the complaint in a district court of competent jurisdiction.' "

Act No. 33, approved July 22, 1935, Laws of 1935, Special Session, p. 418, entitled **"An Act to Confer upon the Supreme Court of Puerto Rico Exclusive Original Jurisdiction in *Quo Warranto* Proceedings that the Government of Puerto Rico May Institute for Violations of the Provisions of Section 752, Title 48, United States Code,** and for Other Purposes", reads:

"*Be it enacted by the Legislature of Puerto Rico:*

SECTION 1.—There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all *Quo Warranto* proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding of the nature of *Quo Warranto*.

SECTION 2.—All laws or parts of laws in conflict herewith are hereby repealed.

SECTION 3.—This Act, being of an urgent character, shall take effect immediately after its approval."

Act No. 44, approved August 6, 1935, Laws of 1935, Special Session, pp. 508-510, provides, in relevant parts:

'SECTION 3(*a*).—In addition to the purposes specified in the foregoing Section 3, private property may be taken or destroyed to carry out and develop any general plan of economic reconstruction for the general benefit of the insular community, implanted by The People of Puerto Rico or by the Government of the United States, but through the Government of Puerto Rico, provided said plan is previously approved by the Economy Commission of the Legislature of Puerto Rico, and especially for the redistribution or division of lands concentrated in large estates, or for the establishment of public centrals or factories for the manufacture of sugar or for any industry or activity. For the said purposes, condemnation proceedings may be instituted against lands or their accessories, such as buildings, machinery, factories, electric power plants, wharves, bulkheads, dikes, quays, or any other structure either similar or for like purposes.

'For the purposes of this section, all works and projects to be carried out under any general plan of economic reconstruction for Puerto Rico, and especially for the purposes enumerated in the foregoing paragraph, are declared of public utility, and likewise, all such real properties and their accessories as above enumerated, as may be necessary to carry out the purposes stated, are hereby also declared of public utility and may be condemned without the previous declaration of public utility prescribed in Section 2 hereof.' * * *

'Condemnation proceedings may be instituted by The People of Puerto Rico or by the Government of the United States, through The People of Puerto Rico or any board or commission created by the Legislature of Puerto Rico, to carry out the above-mentioned purposes.'

* * * * * * *

Secs. 2 and 6 of the **"Act Establishing *'Quo Warranto'* Proceedings" approved March 1, 1902**, Laws of 1902, pp. 201-203, as amended by Act No. 37, approved April 24, 1931, Laws of 1931, pp. 354-356,—as in force up to the time of the approval of Act No. 47, of August 7, 1935, and as in force thereafter except insofar as amended by said Act No. 47—read:

SECTION 2.—That in case any person should usurp or unlawfully hold or execute any public office or should unlawfully make use of any franchise, or likewise shall hold any office in any corporation created by and existing under the laws of Porto Rico, or any public officer shall have done, or suffered any act which, by the provisions of the law, works a forfeiture of his office, or any association or number of persons shall act within Porto Rico as corporation, without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law: The attorney general or any fiscal of the respective district courts, either of his own accord or at the instance of any individual relator, may present a petition to the district court of competent jurisdiction, for leave to file an information in the nature of 'Quo Warranto' in the name of the People of Porto Rico and if such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition, and order the information to be filed, and process to issue.

Where it appears to the court that the several rights of divers parties to the same office or fran-

chise may properly be determined on one petition, the court may give leave to join all such persons in the same petition in order to try their respective rights to such office or franchise.

SECTION 6.—(*As amended by Act No. 37, Laws of 1931.*) In case any person or corporation against whom any such petition is filed is adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise, and fine such person or corporation for usurping, intruding into, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the relator for the costs of the prosecutions; *Provided*, That instead of judgment of ouster from a franchise, the court may fine the person or corporation found guilty in any sum not exceeding five thousand dollars for each offense; *And provided, further*, That whenever a judgment is rendered by which the defendant is declared to have usurped any public office or to be unlawfully performing the duties thereof, said defendant shall immediately retire from said office and cease performing the duties thereof. If he should fail to do so, the Court on application of the Attorney General or of any person having an interest in said office, shall direct the issuance of final process to the marshal ordering him to oust the said defendant.

Whenever judgment is rendered in favor of any defendant, such defendant shall recover from the relator his costs, including reasonable attorney's fees.

Act No. 47. Approved August 7, 1935, Laws of 1935, Special Session, pp. 530-536, reads:

Be it enacted by the Legislature of Puerto Rico:

SECTION 1.—Section 2 of An Act entitled "An Act establishing Quo Warranto proceedings", approved March 1, 1902, is hereby amended as follows:

"SECTION 2.—In case any person should usurp, or unlawfully hold or execute any public office or should unlawfully make use of any franchise, or likewise shall hold any office in any corporation created by and existing under the laws of Puerto Rico, or any public officer shall have done or suffered any act which, by the provisions of the law, involves a forfeiture of his office, or any association or number of persons shall act within Puerto Rico as a corporation, without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General, or any prosecuting attorney of the respective district court, either on his own initiative or at the instance of another person, may file before any district court of Puerto Rico a petition for an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent, exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General or any district attorney, either on his own initiative or at the instance of another person, may file before the Supreme Court of Puerto Rico a petition for an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. Where it appears to the court that the several rights of divers parties to the same office or franchise may properly be determined on the same proceeding, the court may give leave to join all such persons in the same petition, in order to try their respective rights to such office or franchise."

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.

"In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

SECTION 2.—Section 6 of an Act entitled "An Act establishing *Quo Warranto* proceedings," approved March 1, 1902, is hereby amended as follows:

"SECTION 6.—In case any person or corporation against whom any such petition is filed, is adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise to which the petition refers, and fine such person or corporation for usurping, intruding in, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the defendant for the costs of the prosecutions; *Provided*, that whenever sentence is pronounced declaring that the defendant has usurped or is unlawfully exercising the functions of any public office, said defendant must cease immediately in said office, and abandon the same; and if he fails to do so, the court, on petition of the Attorney General or of any person interested in the office, shall issue an order to the marshal compelling him to oust the defendant from office.

"Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall, in case the defendant is a domestic corporation, decree

the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings.*

"The violation of an order prohibiting the doing of business after final judgment is rendered shall be punished by a maximum fine of five hundred (500) dollars for each day such entity may continue in operation, enforceable on the property of the entity, and the persons representing it shall be guilty of contempt of court, punishable by imprisonment for a minimum term of from one to six months in jail.

"Whenever judgment is rendered in favor of any defendant, such defendant may recover costs from the plaintiff, including a reasonable attorney's fee.

"For the purpose of fixing the value of the property, The People of Puerto Rico, through its agents or representatives, is authorized to enter the properties the object of the controversy, whatever their nature or condition may be."

SECTION 3.—All laws or parts of laws in conflict herewith are hereby repealed.

SECTION 4.—This Act, being of an urgent character, shall take effect immediately after its approval.

* We question this translation. See page 26, *supra*.

Act No. 48, approved August 7, 1935, Laws of 1935, Special Session, pp. 536-538, provides, in relevant parts:

"SECTION 1.—Every act or contract which in any form impairs, affects, or violates the provisions contained in Section 3 of the Joint Resolution of the Congress of the United States, approved May 1, 1900, regarding the purchase, sale, or possession of real property, shall be illegal.

SECTION 2. — Every corporation which openly, fraudulently, or by misrepresentation, or in any way acquires lands in violation of the provisions of Section 3 of the Joint Resolution of the Congress of the United States, approved May 1, 1900, regarding the purchase; sale, or possession of real property, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a minimum fine of five hundred (500) dollars and a maximum fine of one thousand (1,000) dollars.

* * * * * *

SECTION 5.—The district courts of Puerto Rico are hereby vested with exclusive original jurisdiction to hear, try, and decide all cases of violation of this Act, without right to a trial by jury.

SECTION 6.—All laws or parts of laws in conflict herewith are hereby repealed.

* * * * * *"